



## **COUNCIL CHAMBERS**

17555 PEAK AVENUE MORGAN HILL CALIFORNIA 95037

<b>COUNCIL MEMBERS</b>	<b>REDEVELOPMENT AGENCY</b>
Dennis Kennedy, Mayor	Dennis Kennedy, Chair
Mark Grzan, Mayor Pro Tempore	Mark Grzan, Vice-Chair
Larry Carr, Council Member	Larry Carr, Agency Member
Greg Sellers, Council Member	Greg Sellers, Agency Member
Steve Tate, Council Member	Steve Tate, Agency Member

**WEDNESDAY, APRIL 5, 2006**

**AGENDA**

**JOINT MEETING**

**CITY COUNCIL SPECIAL & REGULAR MEETING**

**and**

**REDEVELOPMENT AGENCY REGULAR MEETING**

**6:00 P.M.**

*A Special Meeting of the City Council is Called at 6:00 P.M. for the Purpose of Conducting Closed Sessions.*

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**Dennis Kennedy, Mayor**

**CALL TO ORDER**

(Mayor/Chairperson Kennedy)

**ROLL CALL ATTENDANCE**

(City Clerk/Agency Secretary Torrez)

**DECLARATION OF POSTING OF AGENDA**

**Per Government Code 54954.2**

(City Clerk/Agency Secretary Torrez)

**6:00 P.M.**

## ***City Council Action***

### **CLOSED SESSION:**

**1.**

#### **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:**

Authority: Pursuant to Government Code 54956.9(a)  
Case Name: Tichinin v. City of Morgan Hill  
Case Number: Santa Clara County Superior Court, Case No. 1-05-CV-046112  
Attendees: City Manager; City Attorney; Special Counsel Timothy J. Schmal

**2.**

#### **CONFERENCE WITH LABOR NEGOTIATOR:**

Authority: Government Code Section 54957.6  
Agency Negotiators: City Manager; Human Resources Director  
Employee Organizations: Morgan Hill Police Officers Association  
Employees Covered under Management Resolution #5872, as amended

**3.**

#### **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Authority: Government Code Section 54956.9(a)  
Case Name: General Lighting Service, Inc. v. Wells Construction Group, et al. [Consolidated Actions]  
Case Number: Santa Clara County Superior Court, Lead Case No. 1-04-CV-025561  
Attendees: City Manager; City Attorney

**4.**

#### **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Authority: Government Code Section 54956.9(a)  
Case Name: Berkman v. City of Morgan Hill et al.  
Case Number: Santa Clara County Superior Court, 1-04-CV-031021  
Attendees: City Manager; City Attorney

### **OPPORTUNITY FOR PUBLIC COMMENT**

### **ADJOURN TO CLOSED SESSION**

### **RECONVENE**

### **CLOSED SESSION ANNOUNCEMENT**

**7:00 P.M.**

### **SILENT INVOCATION**

### **PLEDGE OF ALLEGIANCE**

**PROCLAMATION**

Grange Month  
*Mr. Lynn Liebschutz*

Sexual Assault Awareness Month  
*Amy Molica, Community Solutions*

**PRESENTATION**

Donation to Library Building Project  
*W. Robert Ruge*  
*Roseanne Macek, Morgan Hill Public Library*  
*Carol O'Hare, Friends of the Library*

Law Enforcement Foundation  
*David Cohen*

**CITY COUNCIL REPORT**

Council Member Carr

**CITY COUNCIL SUB-COMMITTEE REPORTS**

**CITY MANAGER'S REPORT**

**CITY ATTORNEY'S REPORT**

**OTHER REPORTS**

**PUBLIC COMMENT**

**NOW IS THE TIME FOR COMMENTS FROM THE PUBLIC REGARDING ITEMS NOT ON THIS AGENDA.**

(See notice attached to the end of this agenda.)

**PUBLIC COMMENTS ON ITEMS APPEARING ON THIS AGENDA WILL BE TAKEN AT THE TIME  
THE ITEM IS ADDRESSED BY THE COUNCIL. PLEASE COMPLETE A SPEAKER CARD AND  
PRESENT IT TO THE CITY CLERK.**

(See notice attached to the end of this agenda.)

**PLEASE SUBMIT WRITTEN CORRESPONDENCE TO THE CITY CLERK/AGENCY SECRETARY. THE  
CITY CLERK/AGENCY SECRETARY WILL FORWARD CORRESPONDENCE TO THE CITY  
COUNCIL/REDEVELOPMENT AGENCY.**

## ***City Council Action***

**CONSENT CALENDAR:**

**ITEMS 1-13**

The Consent Calendar may be acted upon with one motion, a second and the vote, by each respective Agency. The Consent Calendar items are of a routine or generally uncontested nature and may be acted upon with one motion. Pursuant to Section 5.1 of the City Council Rules of Conduct, any member of the Council or public may request to have an item pulled from the Consent Calendar to be acted upon individually.

**Time Estimate**

**Page**

**Consent Calendar: 1 - 10 Minutes**

1. **AMENDMENT TO ANNUAL CONTRACT WITH MONTEREY COUNTY LABORATORY FOR WATER SAMPLING AND ANALYSIS** .....7  
**Recommended Action(s):**  
  1. **Approve** the Amendment to the Agreement with Monterey County Laboratory Dated 2004 to Increase the Maximum Compensation from \$244,000 to \$314,000; and
  2. **Approve** the Appropriation of \$70,000 from the Unappropriated Water Fund Balance (650) to Fund Perchlorate Testing and EPA Water Quality Testing.
2. **REIMBURSEMENT FOR WATER MAIN INSTALLATION BY MARRAD GROUP, INC. (TRACT 9586)** .....11  
**Recommended Action(s):** **Authorize** the Reimbursement of \$145,585 for Installation of a 16-Inch Water Main by Marrad Group, Inc.
3. **AWARD OF SECOND STREET WATER MAIN REPLACEMENT PROJECT** .....12  
**Recommended Action(s):**  
  1. **Award** Contract to Monterey Peninsula Engineering, Inc. for the Construction of the Second Street Water Main Replacement Project in the Amount of \$164,375; and
  2. **Authorize** Expenditure of Construction Contingency Funds, Not to Exceed \$16,438.
4. **FINAL MAP APPROVAL JASPER PARK PHASE II (TRACT 9772)** .....13  
**Recommended Action(s):**  
  1. **Approve** the Final Map; and
  2. **Authorize** the Recordation of the Map Following Recordation of the Development Improvement Agreement.
5. **STATUS REPORT REGARDING IMPLEMENTATION OF THE INSTITUTE GOLF COURSE MITIGATION MONITORING AND REPORTING PLAN (MMRP)** .....14  
**Recommended Action(s):** **Information** Only, No Action Required.
6. **CAPSTONE COMMUNITY CONVERSATION** .....29  
**Recommended Action(s):**  
  1. **Authorize** the City Manager to Execute an Agreement with ViewPoint Learning to Provide Public Engagement Services in Connection with the April 29, 2006 Capstone Community Conversation; Subject to Review and Approval by the City Attorney; and
  2. **Increase** Appropriations in the Community Promotions Budget within the General Fund by \$10,000.
7. **CONTRACT WITH DAVID J. POWERS & ASSOCIATES FOR ENVIRONMENTAL CONSULTING SERVICES** .....32  
**Recommended Action(s):** **Authorize** the City Manager to Execute the Agreement; Subject to Review and Approval by the City Attorney.
8. **APPROVE PURCHASE ORDER FOR Data911 MOBILE COMPUTER SYSTEMS** ..... 38  
**Recommended Action(s):**  
  1. **Authorize** the City Manager to Approve a Purchase Order Totalling \$45,530.55 with Data911 for New Mobile Computer Systems;
  2. **Award** the total Project Cost of \$104,069.82, and **Authorize** the City Manager to Execute a Three-Year Agreement with Data911 for the Purchase of These Computer Systems; Subject to Review and Approval by the City Attorney; and
  3. **Approve** a Budgetary Increase of \$13,008.73 in the Police Donation Fund.

	<b>Time Estimate</b>	<b>Page</b>
	<b>Consent Calendar: 1 - 10 Minutes</b>	
9.	<b><u>PURCHASE OF POLICE DEPARTMENT MULTI-SERVICES OFFICER (MSO)/PRISONER TRANSPORT VEHICLE</u></b> .....	39
	<b><u>Recommended Action(s):</u></b> <u>Authorize</u> the City Manager to Approve the Purchase Order for a Police Transport Van through Downtown Ford for a Total Amount of \$22,560.	
10.	<b><u>ACCEPTANCE OF DONATION FROM W. ROBERT RUGE FOR THE LIBRARY BUILDING PROJECT</u></b> .....	40
	<b><u>Recommended Action(s):</u></b> <u>Accept</u> Monetary Donation of \$5,000 from W. Robert Ruge for the Library Building Project.	
11.	<b><u>SOUTH VALLEY CIVIC THEATRE LEASE RENEWAL OF THE MORGAN HILL COMMUNITY PLAYHOUSE</u></b> .....	41
	<b><u>Recommended Action(s):</u></b>	
	1. <u>Approve</u> the Lease Agreement Renewal with South Valley Civic Theatre (SVCT) for the use of the Morgan Hill Community Playhouse; and	
	2. <u>Authorize</u> the City Manager to Execute the Lease Agreement Renewal, Subject to Review and Approval by the City Attorney; and do whatever is Necessary to Effectuate the Agreement.	
12.	<b><u>ADOPT ORDINANCE NO. 1763, NEW SERIES</u></b> .....	42
	<b><u>Recommended Action(s):</u></b> <u>Waive</u> the Reading, and <u>Adopt</u> Ordinance No. 1763, New Series, and <u>Declare</u> That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: <b>AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE MORGAN HILL MUNICIPAL CODE, SECTION 18.56.150 MINOR EXCEPTIONS TO ALLOW MINOR ADDITIONS WHILE MAINTAINING EXISTING NON-CONFORMING HEIGHTS. (ZA-05-28: OAKHILL-SPERA).</b>	
13.	<b><u>ADOPT ORDINANCE NO. 1764, NEW SERIES</u></b> .....	45
	<b><u>Recommended Action(s):</u></b> <u>Waive</u> the Reading, and <u>Adopt</u> Ordinance No. 1764, New Series, and <u>Declare</u> That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: <b>AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A PRECISE DEVELOPMENT PLAN AND PUD GUIDELINES FOR A PLANNED UNIT DEVELOPMENT LOCATED AT THE NORTHWEST CORNER OF COCHRANE ROAD AND MADRONE PARKWAY (APN 726-33-028) (ZAA-04-11: COCHRANE-TBI).</b>	

## ***Redevelopment Agency Action***

### **CONSENT CALENDAR:**

#### **ITEM 14**

	<b>Time Estimate</b>	<b>Page</b>
	<b>Consent Calendar: 1 - 10 Minutes</b>	
14.	<b><u>REVISION TO FACADE IMPROVEMENT PROGRAM</u></b> .....	58
	<b><u>Recommended Action(s):</u></b> <u>Authorize</u> the Executive Director to Modify the Façade Improvement Program to Include Older Commercial and Industrial Buildings.	

**PUBLIC COMMENTS ON ITEMS *NOT* APPEARING ON AGENDA**

Following the opening of Council/Agency business, the public may present comments on items *NOT* appearing on the agenda that are within the Council's/Agency's jurisdiction. Should your comments require Council/Agency action, your request will be placed on the next appropriate agenda. No Council/Agency discussion or action may be taken until your item appears on a future agenda. You may contact the City Clerk/Agency Secretary for specific time and dates. This procedure is in compliance with the California Public Meeting Law (Brown Act) G.C. 54950.5. Please limit your presentation to three (3) minutes.

**PUBLIC COMMENTS ON ITEMS APPEARING ON AGENDA**

The Morgan Hill City Council/Redevelopment Agency welcomes comments from all individuals on any agenda item being considered by the City Council/Redevelopment Agency. Please complete a Speaker Card and present it to the City Clerk/Agency Secretary. This will assist the Council/Agency Members in hearing your comments at the appropriate time. Speaker cards are available on the table in the foyer of the Council Chambers. In accordance with Government Code 54953.3 it is not a requirement to fill out a speaker card in order to speak to the Council/Agency. However, it is very helpful to the Council/Agency if speaker cards are submitted. As your name is called by the Mayor/Chairman, please walk to the podium and speak directly into the microphone. Clearly state your name and address and then proceed to comment on the agenda item. In the interest of brevity and timeliness and to ensure the participation of all those desiring an opportunity to speak, comments presented to the City Council/Agency Commission are limited to three minutes. We appreciate your cooperation.

**NOTICE**

**AMERICANS WITH DISABILITIES ACT (ADA)**

The City of Morgan Hill complies with the Americans with Disability Act (ADA) and will provide reasonable accommodation to individuals with disabilities to ensure equal access to all facilities, programs and services offered by the City. If you need special assistance to access the meeting room or to otherwise participate at this meeting, including auxiliary aids or services, please contact the Office of the City Clerk/Agency Secretary at City Hall, 17555 Peak Avenue or call 779-7259 or (Hearing Impaired only - TDD 776-7381) to request accommodation. Please make your request at least 48 hours prior to the meeting to enable staff to implement reasonable arrangements to assure accessibility to the meeting.

If assistance is needed regarding any item appearing on the City Council/Agency Commission agenda, please contact the Office of the City Clerk/Agency Secretary at City Hall, 17555 Peak Avenue or call 779-7259 or (Hearing Impaired only - TDD 776-7381) to request accommodation.

**NOTICE**

Notice is given, pursuant to Government Code Section 65009, that any challenge of Public Hearing Agenda items in court, may be limited to raising only those issues raised by you or on your behalf at the Public Hearing described in this notice, or in written correspondence delivered to the City Council/Agency Commission at, or prior to the Public Hearing on these matters.

**NOTICE**

The time within which judicial review must be sought of the action by the City Council/Agency Commission which acted upon any matter appearing on this agenda is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure.



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: April 5, 2006***

### **AMENDMENT TO ANNUAL CONTRACT WITH MONTEREY COUNTY LABORATORY FOR WATER SAMPLING AND ANALYSIS**

#### **RECOMMENDED ACTION(S):**

1. Approve the attached Amendment to the Agreement dated 2004 with Monterey County Laboratory to increase the maximum compensation from \$244,000 to \$314,000.
2. Approve the appropriation of \$70,000 from our unappropriated Water Fund balance (650) to fund perchlorate testing and EPA water quality testing.

**EXECUTIVE SUMMARY:** On June 7, 2004 Council awarded the annual contract to Monterey County Lab in the amount of \$244,000 for fiscal years 2004/05 and fiscal year 2005/06. The contract provides for laboratory service for potable water sampling and analysis.

The majority of the funds have already been used for routine analysis as required by the State Department of Health Services (DOHS) and for perchlorate analysis. Routine perchlorate costs were included in the agreement but there have been additional analysis at Nordstom and Tennant Wells which were not originally included in the agreement. We have also required a shorter turn-around time on the analysis than what the laboratory bid therefore causing the rate to go up.

An additional \$70,000 amended to the contract will ensure the ability to meet State and Federal requirements for sampling and analysis.

The City is continuing to work with special counsel in seeking reimbursement from the Olin Corporation for costs incurred due to the perchlorate contamination.

**FISCAL IMPACT:** Funds exist in the unappropriated water fund balance to cover this expense.

**Agenda Item # 1**

**Prepared By:**

**Management Analyst**

**Approved By:**

**Department Director**

**Submitted By:**

**City Manager**

AMENDMENT No. 1 TO AGREEMENT

LABORATORY SERVICES FOR POTABLE WATER SAMPLING AND ANALYSIS

MONTEREY COUNTY CONSOLIDATED CHEMISTRY LABORATORY

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2006, by the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and COUNTY OF MONTEREY on behalf of the Monterey County Consolidated Chemistry Laboratory, a laboratory operated by the County's Health Department, ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into following City Council authorization on April 5, 2006.
2. CITY desires to amend the Agreement dated September 8, 2004, attached as Exhibit "1" to this Agreement and incorporated herein.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Term and Condition of Original Agreement. All terms and conditions contained in Exhibit "1" are to remain in full force and effect with the sole exception of the terms listed below:
2. PAGE 1 SECTION 3.1:  
3.1 Amount (\$314,000). Compensation under this Agreement shall not exceed (\$314,000).

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

THE CITY OF MORGAN HILL

COUNTY OF MONTEREY  
Len Foster, Director of Health

\_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature:

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
APPROVED AS TO FISCAL PROVISIONS  
Auditor-Controller

\_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

\_\_\_\_\_  
By

Date: \_\_\_\_\_

APPROVED:

APPROVED AS TO INSURANCE

\_\_\_\_\_  
Risk Manager

Date: \_\_\_\_\_

\_\_\_\_\_  
By:

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
County Counsel

Date: \_\_\_\_\_

Notes:

Original contract amount is \$244,000

Remaining balance on this year's contract is \$18,000

Estimated costs for additional tests required by EPA/Federal is \$32,000

Estimated remaining perch costs for the year is \$38,000



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *April 5, 2006*

### **AWARD OF SECOND STREET WATER MAIN REPLACEMENT PROJECT**

#### **RECOMMENDED ACTION(S):**

1. Award contract to Monterey Peninsula Engineering, Inc. for the construction of the Second Street Water Main Replacement Project in the amount of \$164,375.
2. Authorize expenditure of construction contingency funds not to exceed \$16,438.

**EXECUTIVE SUMMARY:** The scope of work for this project includes the installation of a water main on Second Street from Del Monte Avenue and Monterey Road.

The bid opening was held on March 28, 2006 and the bids received are as listed below. This contractor's bid has been reviewed and meets all criteria for award. Staff recommends award of the contract to Monterey Peninsula Engineering, Inc. This project is scheduled to begin in May, 2006 and be completed by June, 2006.

Monterey Peninsula Engineering, Inc.'s bid was approximately 17% lower than the engineer's estimate of \$200,000.

Monterey Peninsula Engineering, Inc.	\$164,375
Granite Construction Co.	\$173,173
Pacific Underground Construction, Inc.	\$175,850
McGuire & Hester	\$178,950
Earthworks Paving Contractors, Inc.	\$180,650
Lewis & Tibbits, Inc.	\$183,880
San Jose Water Company	\$188,858
Trinet Construction, Inc.	\$197,650
West Valley Construction	\$199,900
Trinchero Construction, Inc.	\$234,081

**FISCAL/RESOURCE IMPACT:** The total contract cost for this project is \$180,813, which includes a 10% contingency of \$16,438. The project is funded in the 2005-2006 Capital Improvement Program budget under Water Main Replacement, Project #610093.

**Agenda Item # 2**

**Prepared By:**

**Assistant Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *April 5, 2006*

### **AWARD OF SECOND STREET WATER MAIN REPLACEMENT PROJECT**

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Monterey Peninsula Engineering, Inc.'s bid was approximately 17% lower than the engineer's estimate of \$200,000.

Monterey Peninsula Engineering, Inc.	\$164,375
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Pacific Underground Construction, Inc.	\$175,850
McGuire & Hester	\$178,950
Earthworks Paving Contractors, Inc.	\$180,650
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San Jose Water Company	\$188,858
Trinet Construction, Inc.	\$197,650
West Valley Construction	\$199,900
Trinchero Construction, Inc.	\$234,081

**FISCAL/RESOURCE IMPACT:** The total contract cost for this project is \$180,813, which includes a 10% contingency of \$16,438. The project is funded in the 2005-2006 Capital Improvement Program budget under Water Main Replacement, Project #610093.

**Agenda Item # 3**

**Prepared By:**

**Assistant Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: APRIL 5, 2006***

### ***FINAL MAP APPROVAL JASPER PARK PHASE II***

***(TRACT 9772)***

#### **RECOMMENDED ACTION(S):**

1. Approve the final map.
2. Authorize the recordation of the map following recordation of the Development Improvement Agreement.

#### **EXECUTIVE SUMMARY:**

Tract 9772 is a 13 lot subdivision located on the south side of East Dunne Avenue between Butterfield Boulevard and San Benancio Way (see attached location map). The developer has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on June 28, 2005.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provisions with a Title Company for the recordation of the Final Map.

#### **FISCAL/RESOURCE IMPACT:**

Development review for this project is from development processing fees.

**Agenda Item # 4**

**Prepared By:**

**Assistant Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE: April 5, 2006**

### **STATUS REPORT REGARDING IMPLEMENTATION OF THE INSTITUTE GOLF COURSE MITIGATION MONITORING & REPORTING PLAN (MMRP)**

**RECOMMENDED ACTION(S):** For information only; no action required.

**EXECUTIVE SUMMARY:** On August 18, 2004 the Council took actions to approve a MMRP and rezoning of the Institute Golf Course property from Open Space to Planned Unit Development. The MMRP requires submittal of a Site Development and Grading Plan (SDGP) for the golf course. On April 20, 2005 the City Council approved agreements with The Institute/Corralitos Creek (ICC) and with Pacific Municipal Consultants (PMC), by which ICC agreed to pay the City for services to be provided by PMC related to review of the SDGP, as well as verifying compliance with other mitigation measures and conditions of approval. It is relevant to note that the actual SDGP occurs within the end stage of MMRP compliance activities, as it is required to integrate and reflect the results of other planning/compliance activities.

A written status report prepared by PMC, as well as a Summary Table and Action Plan prepared by the applicant's consultant, are attached. As noted by the PMC letter, "the applicant hired Strelow Consulting in November 2005 to manage the compliance efforts on the Math Institute property. Strelow is actively pursuing compliance and is doing an excellent job of maintaining communication with both the City and PMC on the status of compliance activities. Every aspect of the monitoring program is now moving towards compliance." The applicant has hired two engineering firms: Nolan Associates for the engineering geology and hydrogeology; and Fall Creek Engineering for civil, environmental, water resource and restoration engineering. Biosearch Associates has been retained as the new wildlife biologist firm; and Janeki & Associates has been retained as the restoration landscape architect.

The status of items of particular interest:

- Two groundwater monitoring wells installed and third to be drilled when weather allows; surface water quality report submitted; groundwater quality & supply reports to be complete summer 2006.
- Revised Nitrogen Control Plan/Chemical Application Management Plan submitted; City, SCVWD and RWQCB review expected to be complete by end of April 2006, allowing for approval of NPDES permit at that time. Storm Water Pollution Prevention Plan (SWPPP) approved.
- Geotechnical report and drainage analyses expected April 2006; Revegetation plan and SDGP by Summer 2006.

City staff has held meetings with the applicant, applicant's consultants, the Santa Clara Valley Water District and the Regional Water Quality Control Board, and all agencies are continuing to coordinate so that standards of each agency are attained by the various work products submitted by the applicant's consultants. The applicant and USFWS are working to identify appropriate offsite mitigation lands.

It should be noted that the text of the actual mitigation measures in the EIR and Resolution No. 5827 generally do not include specific "due dates". The MMRP did include a "timing" section in the compliance chart. While the applicant did get a late start on compliance activities, and subsequently decided to retain a different project manager and additional professionals who then needed additional time to go through learning curves; it is evident to staff that the timeframes set out in the MMRP were overly optimistic, given the complexity of tasks to be completed, and the fact that certain tasks cannot be completed by some consultants until results and coordination occurs with other consultants.

**FISCAL/RESOURCE IMPACT:** None.

R:\PLANNING\KATHY\INSTITUTE GOLF COURSE MMRP\CC 4-05-06 Staff Report re MMRP Status

**Agenda Item # 5**

**Prepared By:**

**Community  
Development  
Director**

**Submitted By:**

**City Manager**

# INSTITUTE GOLF COURSE MMRP COMPLIANCE SUMMARY & ACTION PLAN

## SUMMARY

### ✓ Mitigation Measures **COMPLETE**

- Drainage details (#1) and Rules of Play & Signage (#2) – to be added to SDGP.
- Potable Water Supply (#8).
- Pond Shelf Design (#11) – Partially completed.
- Pond Buffer Map (#24) – Partially completed.
- Habitat Management Plan (#17).
- Aquatic species quarterly and annual monitoring and reporting (#17, 25: monitoring has been conducted for 2½ years).
- Riparian Setback Maps (#13-complete; #20-partially complete).
- SWPPP Submitted (#21).
- Equipment Operations (#23).
- Grass clippings storage (#22).
- Operations Compliance (#37).
- Building closure and future demolition controls (#29, 32, 33, 34, 35, 38, 39) – not applicable to golf course.

### ✓ Mitigation Measures **SUBMITTED; Agency Review Pending**

- NPDES Application & Surface Water Quality Monitoring Report Submitted (#6, 26).
- Chemical Application Management Plan-CHAMP Submitted (#27).
- Nitrogen Control Plan (#28) included in CHAMP; Soils Testing Report Submitted (#28).
- Tree Replacement – Planting List Submitted (#7).
- USFWS Consultation/HCP (#18) – None required per USFWS (9-30-05) with offsite mitigation (#15, 16 below) and onsite habitat management (#17).

### ✓ Mitigation Measures **IN PROGRESS**

- Grading/Stability Analysis (#4); 3-31-06, estimated completion date.
- Groundwater Supply Investigation (#9).
- Drainage Analyses (#6, 10) and Pond Operation Plan for NPDES (#6), 4-30-06, estimated completion date.
- Revegetation Plan (#11-pond shelves & emergent vegetation, #19, 24-pond buffer & upland habitat, #13-riparian revegetation).
- Aquatic Species Monitoring - 2006, first quarterly report (#17,25); 4/30/06, estimated completion date.
- Offsite Serpentine (#15) and CRLF (#16) Habitat Acquisition/Preservation.

### ✓ Mitigation Measures **to be Completed, upon completion of above studies & plans.**

- Drainage Plan Revisions (#1, 10, 12).
- Site Development Plan (#2, 13, 20, 22, 24, 28, 31).
- Grading and Erosion Control Plan (#4, 10, 12,13, 20, 30, 36-erosion)
- Wetland Review (#5) upon completion of revegetation plan.
- Final Actions (#3-burrowing owl fee, #33, 34-pre-construction surveys, if needed).
- Offsite Riparian Mitigation (#14-Need City Input).

## ACTION PLAN

MITIGATION	STATUS
<p><b>1. WATER QUALITY COMPLIANCE (#6, 21, 26, 27, 28, 36)</b></p> <ul style="list-style-type: none"> <li>✓ <b>Submit NPDES Application (#6, 26). COMPLETE.</b></li> <li>✓ <b>Submit SWPPP (#21, 36). COMPLETE.</b></li> <li>✓ <b>Submit CHAMP &amp; Nitrogen Control Plan (#27, 28).</b></li> <li>✓ <b>Submit monitoring results &amp; surface water quality report to RWQCB for review and signoff on NPDES. COMPLETE.</b></li> <li>✓ <b>NCP/CHAMP (#27,28), including site-specific soil testing and plant requirements. COMPLETE.</b></li> <li>✓ <b>Groundwater Monitoring for CHAMP (#27, 28) – IN PROGRESS.</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ NPDES, SWPPP, CHAMP/NCP submitted in 2005. SWPPP approved by RWQCB in 2005.</li> <li>▪ Surface Water Quality Monitoring Report submitted to agencies in January 2006; meeting held on 3-21-06 with RWQCB, City, SCVWD to review. RWQCB expects to issue "Low Threat" discharge permit in 1-2 months.</li> <li>▪ Groundwater Quality Monitoring Investigation initiated by Fall Creek Engineering in January 2006 based on agency approved Aquifer Sciences scope (April 2004); monitoring wells drilled Feb-March 2006; results expected in April 2006.</li> </ul>
<p><b>2. GEOTECHNICAL – SLOPE STABILITY REPORT (#4) - Civil Engineer or Engineering Geologist.</b></p> <ul style="list-style-type: none"> <li>✓ <b>Confirm slope stability issues and geotechnical consultant needed. COMPLETE.</b></li> <li>✓ <b>Complete Stability and Erosion Analysis. IN PROGRESS.</b></li> <li>✓ <b>Determine whether grading plan changes are required and include in grading plan.</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ Nolan Associates under contract to complete study; first phase expected to be completed in March 2006 that will provide as built grading plan and identify any potential areas of instability.</li> </ul>
<p><b>3. GROUNDWATER SUPPLY INVESTIGATION (#9) - Hydrologist</b></p> <p><b>Review Scope of Work with SCVWD &amp; City. COMPLETE</b></p> <ul style="list-style-type: none"> <li>✓ <b>Review Scope of Work with SCVWD &amp; City. COMPLETE.</b></li> <li>✓ <b>Submit revised Scope of Work. PENDING</b></li> <li>✓ <b>Complete investigation.</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ SCVWD did not approve a previously submitted scope of work in October 2005.</li> <li>▪ Additional analyses were provided to consultant in December 2005; the results indicate no long-term impacts on regional water levels. Nolan Associates under contract to review data and work with SCVWD and consultants to develop revised scope.</li> <li>▪ Meeting with SCVWD, City and consultants held on 3-16-06 to review scope. Revised scope to be submitted early April.</li> </ul>
<p><b>4. TREE REPLACEMENT (#7)</b></p> <ul style="list-style-type: none"> <li>✓ <b>Provide list of type, size, number of onsite planted trees. COMPLETE.</b></li> <li>✓ <b>Submit to City/PMC for review and signoff. COMPLETE.</b></li> <li>✓ <b>Identify number of trees removed and verify 5:1 replacement. CITY/PMC.</b></li> <li>✓ <b>Prepare Annual Arborist Report regarding tree health. PENDING REVIEW WITH CITY</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ Tree List provided to City in December 2005; City review is pending.</li> </ul>
<p><b>5. AQUATIC SPECIES – CRLF / CTS (#11, 12, 17, 19, 25) – Wildlife Biologist</b></p> <ul style="list-style-type: none"> <li>✓ <b>Submit quarterly and 2005 Annual Monitoring Report to City COMPLETE.</b></li> <li>✓ <b>Continue quarterly and annual monitoring for 3 years. IN PROGRESS.</b></li> <li>✓ <b>Shallow pond shelves/vegetation design (#11)- SUBMITTED TO CITY.</b></li> <li>✓ <b>Review CRLF and CTS requirements with biologist and incorporate into plans.</b> <ul style="list-style-type: none"> <li>→ CRLF Consultation regarding catch basin design (#12).</li> <li>→ Pond Operations/Draining (#17).</li> <li>→ Pond shelf design and emergent vegetation (#11).</li> <li>→ Tiger Salamander Breeding Habitat &amp; Buffer Requirements (#19).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ 2005 Monitoring Report submitted to USFWS and City.</li> <li>▪ Biosearch Associates have completed field surveys for first quarter of 2006; quarterly report is expected in April 2006.</li> <li>▪ Pond shelf design partially completed and submitted to City; Biosearch Associates to provide design consultation for revegetation plans.</li> </ul>

MITIGATION	STATUS
<p><b>6. RIPARIAN REVIEWS &amp; REVEGETATION PLAN</b> (#13, 14, 19, 20, 24)</p> <ul style="list-style-type: none"> <li>✓ <b>Review riparian setbacks.</b> <ul style="list-style-type: none"> <li>→ Map Riparian setbacks (#13) - SETBACK MAP SUBMITTED &amp; APPROVED</li> <li>→ Determine Riparian Encroachment and on-/off-site mitigation (#13, 14) – PENDING CITY REVIEW.</li> </ul> </li> <li>✓ <b>Prepare Revegetation Plan.</b> <ul style="list-style-type: none"> <li>→ Prepare Revegetation Plan for riparian setback areas (#13) &amp; pond buffer areas (#19, 24).</li> <li>→ Corralitos Creek setbacks for water quality protection – 14<sup>TH</sup> &amp; 3<sup>RD</sup> HOLE GRAPHICS COMPLETE; 6<sup>TH</sup> HOLE GRAPHIC NEEDED (#20)</li> <li>→ Include pond/vegetation design (#11); revise shelves for Lake B and E (#11)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ <i>Joni L. Janecki &amp; Associates, landscape architects, under contract to prepare conceptual revegetation plan for Corralitos Creek riparian area and pond buffer areas, in consultation with wildlife biologist and restoration specialist, Elkhorn Nursery.</i></li> </ul>
<p><b>7. DRAINAGE PLAN</b></p> <ul style="list-style-type: none"> <li>✓ <b>Supplemental Analysis.</b> <ul style="list-style-type: none"> <li>→ Lake detention/retention capacity analysis (# 6,10)</li> <li>→ Storm drain capacity analysis (#10)</li> <li>→ Prepare Lake Operations Plan (#6, 23)</li> </ul> </li> <li>✓ <b>Drainage Plan Revisions.</b> <ul style="list-style-type: none"> <li>→ Install trench drain between lakes C and D (#10)</li> <li>→ Oil and grease separators (#1)</li> <li>→ Containment dikes around maintenance areas (#1)</li> <li>→ Roofing over any areas where potential for spillage is high (#1)</li> <li>→ Install filtration system in existing catch basins in maintenance area (#10-PMC) and other areas of biofilters (#10-PMC)</li> <li>→ Use of vegetated buffers, filter strips, or swales to prevent discharge from catch basins and outlets into drainages and pipes leading to on-site ponds (#10 and #12)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ <i>Fall Creek Engineering authorized to complete supplemental analyses; completion expected in April 2006. Upon completion, final drainage plan (previously submitted) will be revised.</i></li> </ul>
<p><b>8. USFWS COORDINATION</b> (#15, 16, 18, 25)</p> <ul style="list-style-type: none"> <li>✓ <b>Contact USFWS to Review Mitigation requirements.</b> COMPLETE</li> <li>✓ <b>Review offsite availability.</b> PENDING</li> <li>✓ <b>Review other Section 10 Consultation requirements (&amp; potential HCP) for CRLF</b> (#18). CONSULTATION NOT REQUIRED WITH OFFSITE MITIGATION AND ONSITE HABITAT MANAGEMENT.</li> <li>✓ <b>Consultation regarding ongoing species monitoring</b> (#25). COMPLETE.</li> </ul>	<ul style="list-style-type: none"> <li>▪ <i>USFWS and property owners contacted; former identified site no longer available. Review of other potential sites is pending.</i></li> <li>▪ <i>USFWS letter of 9-30-05 indicates no consultation required with offsite mitigation and adequate onsite management. Draft Habitat Management Plan has been completed and submitted..</i></li> <li>▪ <i>Quarterly and 2005 Annual Monitoring Reports submitted to City and USFWS and reviewed with USFWS staff.</i></li> </ul>

MITIGATION	STATUS
<p><b>9. ENGINEERING PLANS</b></p> <ul style="list-style-type: none"> <li>✓ <b>Grading Plan:</b> <ul style="list-style-type: none"> <li>→ Pre- and post-grading contours <i>TO BE COMPLETED WITH SLOPE ANALYSIS</i>.</li> <li>→ Additional grading, if required, as a result of the Geotechnical report (#4).</li> <li>→ Any grading for drainage, i.e. away from Corralitos Creek and swales (#10, 12, 20). <i>IN PROGRESS</i></li> <li>→ Erosion Control Plan if further grading required (#30, 36).</li> </ul> </li> <li>✓ <b>Site Development Plan – Prepare final plan upon completion of other tasks:</b> <ul style="list-style-type: none"> <li>→ Signage locations to prevent access into riparian areas (#2).</li> <li>→ Pond buffer and shelf locations (<i>on revegetation plan</i>).</li> <li>→ All riparian setbacks (#13 and 20).</li> <li>→ Golf Course Modifications per Conditions (8B-11, 8B-12).</li> <li>→ Location of storage and compost locations for grass clippings (#22).</li> <li>→ Buffers around ponds (#24, 28).</li> <li>→ Intensities and locations of lights on the SDGP (#31).</li> <li>→ Landscaping (Condition 24).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ <i>Fall Creek Engineering under contract to develop grading plans adjacent to Corralitos Creek; final grading and site development plan to be prepared upon completion of other tasks.</i></li> </ul>
<p><b>10. WETLAND DELINEATION (#5)</b></p> <ul style="list-style-type: none"> <li>✓ <b>Review EIR / wetland areas / potential impact areas. COMPLETE.</b></li> <li>✓ <b>Complete delineation and review with ACOE if fill occurred to determine any permit requirements.</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ <i>EIR identifies 1.37 acres of seasonal, potential ACOE jurisdictional wetlands, but no impacts/fill identified in EIR.</i></li> <li>▪ <i>Review potential fill areas upon completion of revegetation, grading, and site development plans.</i></li> <li>▪ <i>Complete wetland delineation and ACOE permit application as may be needed based on final revegetation plans.</i></li> </ul>
<p><b>11. ONGOING MONITORING/REPORTING REQUIREMENTS</b></p> <ul style="list-style-type: none"> <li>✓ <b>Habitat Management:</b> <ul style="list-style-type: none"> <li>→ CRLF and tiger salamander – quarterly monitoring &amp; reporting for 5-year period (#17). <i>IN PROGRESS</i></li> </ul> </li> <li>✓ <b>Water Quality</b> <ul style="list-style-type: none"> <li>→ Monthly sampling (#26). <i>IN PROGRESS</i></li> <li>→ 5-year riparian restoration monitoring (#13)</li> </ul> </li> </ul>	
<p><b>13. ACTIONS PRIOR TO OPENING</b></p> <ul style="list-style-type: none"> <li>✓ Finalize preliminary sign location map that has been submitted (#2)</li> <li>✓ Prepare and distribute rules of play that prohibit entering the riparian corridor (#2)</li> <li>✓ Pre-construction surveys with future development (#33, 34)</li> <li>✓ Outline Payment of Fees <ul style="list-style-type: none"> <li>→ Burrowing Owl Fee (#3)</li> </ul> </li> </ul>	



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March 28, 2006

Kathy Molloy Previsich  
City of Morgan Hill  
Community Development Department  
17555 Peak Avenue  
Morgan Hill, CA 95037-4128

**RE: Math Institute Golf Course's Mitigation Monitoring and Reporting Program (MMRP)**

Dear Ms. Molloy Previsich:

Please accept this as a status report for the Math Institute Golf Course's Mitigation Monitoring and Reporting Program (MMRP) and Conditions of Approval. This status report includes the review of materials submitted by the project proponent since our last report to the City on August 18, 2005 and information received during meetings with the applicant's representatives and interested agencies on March 16 and 21, 2006. Many materials have been submitted for review and approval and the project is moving forward adequately.

The applicant hired Stephanie Strelow of Strelow Consulting in November 2005 to manage the compliance efforts on the Math Institute property. Ms. Strelow is actively pursuing compliance and is doing an excellent job of maintaining communication with both the City and PMC on the status compliance activities. Every aspect of the monitoring program is now moving towards compliance. The brief discussions below are referenced by the MMRP impact and mitigation number addressed, along with the condition of approval number from Exhibit C of Ordinance No. 1687 as applicable. Additional information on the status of the mitigations can be obtained from the August 18, 2005 letter to the City.

It should be noted that all application and review fees that were required to be paid to the City in the MMRP have been paid; however the burrowing owl mitigation fee, which was proposed by the project proponent, shall be paid with the submittal of the Site Development and Grading Plan (SDGP).

**CHICO**  
140 Independence Circle  
Suite C  
Chico, CA 95973  
Phone (530) 894-3469  
Fax (530) 894-6459

**DAVIS**  
1590 Drew Avenue  
Suite 120  
Davis, CA 95616  
Phone (530) 750-7076  
Fax (530) 750-2811

**MONTEREY**  
585 Cannery Row  
Suite 304  
Monterey, CA 93940  
Phone (831) 644-9174  
Fax (831) 644-7696

**MT. SHASTA**  
508 Chestnut Street  
Suite A  
Mt. Shasta, CA 96067  
Phone (530) 926-4059  
Fax (530) 926-4279

**OAKLAND**  
1440 Broadway  
Suite 1008  
Oakland, CA 94612  
Phone (510) 272-4491  
Fax (510) 268-9207

**PHOENIX**  
1616 E. Indian School Road  
Suite 440  
Phoenix, AZ 85016  
Phone (602) 279-1360  
Fax (602) 279-1326

**RANCHO CORDOVA**  
10461 Old Placerville Road  
Suite 110  
Rancho Cordova, CA 95827  
Phone (916) 361-8384  
Fax (916) 361-1574

**SAN DIEGO**  
10951 Sorrento Valley Road  
Suite 1-A  
San Diego, CA 92121  
Phone (858) 453-3602  
Fax (858) 453-3628

<u>Measure/ Condition</u>	<u>Description</u>	<u>Status</u>
Mitigation 1 Conditions #8A-1 & 8A-2	Degradation of runoff and surface water quality. Impacts to habitat of downstream species.	In Progress. The project proponent has agreed to the City and RWQCB recommendations and received further direction at a meeting with the RWQCB on March 21, 2006 at City Hall. The submittal of information to comply with the agreed-upon method of compliance will take place with the submittal of the Site Development Grading Plan (SDGP).
Impact/Mitigation 2 Condition #5D	Degradation of riparian habitat.	In Progress. A preliminary sign location plan with rules of play that satisfies the first part of this mitigation was submitted. Compliance with the mitigation will need to be verified following installation.
Impact/Mitigation 3	<i>(Proposed by the Project proponent and thus not a Condition of Approval).</i> Loss of Burrowing Owl habitat.	In Progress. The Burrowing Owl Mitigation Fee will need to be paid at the time that the consolidated single Site Development and Grading Plan is approved.
Impact/Mitigation 4 Condition #1	Erosion and siltation from failure of existing earthwork:	In Progress. The Geotechnical Report that analyzes site-wide stability has not been submitted, however the site work is currently taking place. A preliminary map showing grading that took place onsite was shown to the City on March 16, 2006 with the final grading plan to be submitted with the SDGP.
Mitigation 5 Condition #5H	Future grading and construction may impact wetlands.	In Progress. The US Army Corp of Engineers will not visit the site to make a determination whether jurisdictional wetlands were impacted due to a lack of adequate staffing at the agency. PMC will evaluate this issue again at submittal of the SDGP. If work is to take place within the riparian corridor in the future, a US Army Corp of Engineers consultation is required.
Mitigation 6 Conditions #9A, B, C	Discharge of water from the lakes to the creek or other drainage would impact water quality.	In Progress. The project proponent has applied for the NPDES permit. The California Regional Water Quality Control Board, Central Coast Region (RWQCB) is currently reviewing the March 21, 2006 applicant submittal of the revised CHAMP.
Mitigation 7 Conditions #19A, B	Golf course construction resulted in removal of ordinance size trees.	In Progress. The project proponent has purchased numerous trees to replace those that were removed during site development. Following several site visits

<u>Measure/ Condition</u>	<u>Description</u>	<u>Status</u>
		and analysis of historical aerial photographs, PMC has determined that there are more trees onsite than were there when the project proponent purchased the property, and foliage coverage is approximately 98% of the coverage prior to construction of the golf course. PMC's arborist is currently developing an appropriate manner of monitoring 5-year health.
Mitigation 8 Condition #8, 10	Project requires acceptable source of potable water prior to issuance of building permit for AIM building.	In Progress. The project proponent indicates that an onsite water treatment facility will be constructed to provide a suitable supply of domestic water prior to the issuance of building permits for the proposed Mathematics Institute.
Mitigation 9 Conditions #12A, B, C	Irrigation of the site may substantially deplete groundwater resources.	In Progress. The project proponent has reviewed 10 years of trend information, and has selected the option of performing a detailed groundwater investigation to determine the permissible level of groundwater pumping for golf course irrigation. Two of the three monitoring wells were installed. The final monitoring well will be installed when weather allows. The project proponent will also use the existing wells onsite to do groundwater monitoring. Annual reports are required. When the RWQCD and the SCVWD approve the project proponent's proposal and verify their approval with the City via written documentation, this mitigation will be satisfied. A hydrogeologist was hired to address this mitigation and to submit a detailed plan that addresses SCVWD and RWQCB concerns as discussed at the March 16 and March 21, 2006 meetings.
Mitigation 10 Condition #6A	Golf course construction resulted in higher localized peak runoff in the vicinity of main entrance on Foothill Avenue.	In Progress. The project proponent has agreed to the City SCVWD and RWQCB recommendations and received further direction at the March 16 and March 21, 2006 meetings. The submittal of information to comply with the agreed-upon method of compliance will take place with the submittal of the Site Development Grading Plan (SDGP).
Condition #25	Redesign and Resizing of Drainage	In Progress. Plans and analysis supporting

<u>Measure/ Condition</u>	<u>Description</u>	<u>Status</u>
	Conduit at Maple and Resizing of Existing Culverts located at the private driveways downstream from the project site (Condition #26) to prevent localized flooding.	the proposed redesign and resizing of drainage conduit at Maple Avenue and of culverts at downstream private driveways shall be submitted to the Public Works Department.
Impact/Mitigation 11 Condition #2C	Also see Mitigation Measure 24 below. Construction and continued use of the golf course has eliminated Red Legged Frog (RLF), California Tiger Salamander (CTS), and Western Pond Turtle (WPT) habitat, and Vegetated Buffers are needed around ponds.	In Progress. The applicant has hired a landscape architect and biologist to complete the design of the shelves. Buffer and shelf locations as outlined in the August 18, 2005 PMC letter are required to be shown on the SDGP.
Impact/Mitigation 12 Conditions #2C, D	Construction and continued use of the golf course has eliminated Red Legged Frog (RLF), California Tiger Salamander (CTS), and Western Pond Turtle (WPT) habitat, and SDGP must show location and design of treatment measures for all Storm Drain Outlets.	In Progress. The project proponent has agreed to the City recommendations and received further direction at the March 16 and March 21, 2006 meetings. The submittal of information to comply with the agreed-upon method of compliance will take place with the submittal of the Site Development Grading Plan (SDGP).
Impact/Mitigation 13 Conditions #5A, B, E, F, G	Ongoing use and maintenance of the golf course will adversely impact the quality of the riparian habitat, especially the high quality riparian habitat along the upper reaches of Corralitos Creek.	In Progress. The project proponent has agreed to the City recommendations and received further direction at the March 16 and March 21, 2006 meetings. The submittal of information to comply with the agreed-upon method of compliance will take place with the submittal of the Site Development Grading Plan (SDGP).
Impact/Mitigation 14 Condition #18	Golf course development removed approximately one-half acre of riparian habitat.	In Progress. Approximately ½ acre of riparian habitat was lost during golf course construction, grading plans would need to be provided to restore habitat on a 3:1 ratio. There is limited opportunity for on-site restoration so the project proponent is researching possible offsite locations. Said plans need to be approved by the applicable agencies before proceeding with the physical work. All site modifications will need to be included on the SDGP.
Impact/Mitigation 15; Conditions #2A-1, 2A-3, 17	25.5 acres of serpentine habitat that would have supported a number of special status plant species was eliminated by golf course construction, requiring establishment of a conservation easement.	In Progress. The project proponent is researching potential offsite mitigation locations. The location will have to be satisfactory to both the City and to the USFWS. If the USFWS deems a location adequate for mitigation, the City will accept

<u>Measure/ Condition</u>	<u>Description</u>	<u>Status</u>
		that location as suitable for establishment of a conservation easement after verification by the PMC biologist.
Impact/Mitigation 16 Conditions #2A-2, 20D	25.6 acres of RLF habitat was eliminated by golf course construction, requiring establishment of a conservation easement.	In Progress. The project proponent is researching potential offsite mitigation locations. The location will have to be satisfactory to both the City and to the USFWS. Following the USFWS's determination that a location is adequate for mitigation and verification by the PMC biologist, the City will accept that location as suitable.
Impact/Mitigation 17 Conditions #2B, 2H, 20B, 21B	25.6 acres of RLF habitat, and CTS habitat, was eliminated by golf course construction and ongoing operations, requiring implementation of strategies to manage non-native predator species (bullfrog).	In Progress. The quarterly eyeshine surveys are taking place as required. As discussed previously, the "Habitat Management Plan" is complete but needs to be approved by the USFWS. Verification will most likely occur through the Section 10 consultation process when the project proponent will use the "Habitat Management Plan" as a basis for development of an HCP.
Impact/Mitigation 18 Condition #20E	25.6 acres of RLF habitat was eliminated by golf course construction, requiring a formal consultation with USFWS and issuance of appropriate permit.	In Progress. There is no formal consultation required from the USFWS as long as mitigations 15, 16 and 17 are satisfied.
	Approximately three acres of breeding ponds for California tiger salamander were eliminated by golf course construction.	In Progress. The applicant has hired a hydrogeologist, landscape architect and biologist to complete the design. Onsite areas of qualified habitat (meeting specifications of Condition #21A) need to be shown on the SDGP. The project proponent needs to submit a statement by a qualified herpetologist verifying the adequacy of the mitigation program and, if any off-site habitat is chosen, the adequacy of that habitat.
Impact/Mitigation 20 Conditions #2A-3, 2E, 2F, 2F-1, 8A-4, 8B-11, 8B-12	Past construction and ongoing operation of the golf course has caused and will continue to cause water quality impacts to water in Corralitos Creek and downstream, impacting habitat and other beneficial uses within the watershed.	In Progress. A topographic survey by a Civil Engineer was prepared for the site and will be included in the SDGP. Compliance with the requirements as outlined in the August 18, 2005 PMC status letter is also required.
Impact/Mitigation	Degradation of runoff and surface	Complete. The RWQCB has accepted the

<u>Measure/ Condition</u>	<u>Description</u>	<u>Status</u>
21 Conditions #20C, 21C	water quality, and impacts to habitat of downstream species, requiring preparation of a SWPPP.	Storm Water Pollution Prevention Plan (SWPPP) as adequate. The work plan described in the SWPPP is being implemented. The RWQCB staff will inspect the project site periodically and if there are any violations of the plan, the project proponent will be notified. This mitigation measure is satisfied assuming ongoing compliance with the SWPPP.
Impact/Mitigation 22 Condition #16A	Grass clipping <i>and/or grass plugs</i> allowed to decompose in piles have caused adverse odor impacts to neighboring residents.	Complete. This mitigation measure is satisfied assuming ongoing compliance with appropriate storage in the designated location. The project proponent will need to show the location of storage on the SDGP when completed.
Impact/Mitigation 23 Condition #2G	Nighttime use of mechanized equipment, including lawn mowers, is more likely to result in destruction of RLF.	Complete. This mitigation measure is satisfied assuming ongoing compliance with golf course procedures. Review and verification by the City will occur as plans are submitted and site operations continue.
Impact/Mitigation 24 Conditions #2C, 2D, 20A	Construction and continued use of the golf course has eliminated habitat for RLF, CTS, and WPT, requiring a 10-foot buffer around all onsite ponds/lakes.	In Progress. The applicant has hired a landscape architect and biologist to complete the design of the buffers as described in the August 18, 2005 PMC status letter.
Impact/Mitigation 25 Condition #2H	Construction and continued use of the golf course has eliminated habitat for RLF, CTS, and WPT, requiring a 5-year monitoring program.	In Progress. The program has been included in the HCP-Mitigation Operations Plan, and quarterly analyses are being submitted on a regular basis. Although several reports have been late they are being submitted in substantial compliance with the mitigation measure. This mitigation is ongoing and continued reporting is required.
Impact/Mitigation 26 Condition #8C-3	Construction and continued use of the golf course has eliminated habitat for RLF, CTS, and WPT, requiring monthly sampling and analysis of water quality in onsite ponds and Corralitos Creek.	In Progress. Water Quality sampling has occurred though not on a monthly basis and the analysis has been sporadically submitted to the City and SCVWD for review. Results have not revealed any significant water quality issues. During the March 16 meeting, SCVWD stated that project proponent is not in compliance with the condition and requested that regular sampling and reporting resume.
Impact/Mitigation 27 Conditions #8B, 8C, 27	Ongoing use and maintenance of the golf course may contaminate groundwater below the site, on-site drainage, and the downstream	In Progress. The revised Nitrogen Control Plan/Chemical Application Management Plan (NCP/CHAMP) is currently being reviewed by the City, the SCVWD, and the

<u>Measure/ Condition</u>	<u>Description</u>	<u>Status</u>
	reaches of Corralitos Creek, San Martin Creek and Llagas Creek with pesticides and herbicides and fertilizers, requiring preparation and compliance with a Nitrogen Control Plan (NCP) and a Chemical Application Management Plan (CHAMP).	RWQCB. Although surface water sampling locations and timing has been inconsistent in the past, the project proponent is now testing all sampling locations on a monthly basis. Annual reports on implementation and results of water quality monitoring need to be submitted to the City, SCVWD and RWQCB. Also see the comments under Mitigation 26 above.
Impact/Mitigation 28 Conditions #8B, 8C	On-going use and maintenance of the golf course will substantially increase existing nitrogen levels in the groundwater, which could adversely affect nearby drinking water wells, as well as the entire aquifer. Nitrogen loading impacts to downstream surface waters, including Corralitos Creek, San Martin Creek, and Llagas Creek, could also occur.	In Progress. The Nitrogen Control Plan/Chemical Application Management Plan (NCP/CHAMP) was submitted to the City, the RWQCB, and the SCVWD. Compliance with the requirements as outlined in the August 18, 2005 PMC status letter is also required.
Impact/Mitigation 29	Occupancy of the existing restaurant building could result in impacts to human safety due to concerns about the structural stability of the building.	The applicant has requested an amendment to the Mathematics Conference Center PUD which includes demolition of the existing restaurant building, construction of additional parking, installation of considerable landscaping, and associated grading activities. Supplemental environmental analysis will consider this impact.
Impact/Mitigation 30 Condition #7A - F	Construction and continued use of the golf course has eliminated habitat for RLF, CTS, and WPT, and a SWPPP and NPDES permit, reflecting appropriate erosion control measures, are required for any further grading activities.	In Progress. Appropriate grading plans and erosion control measures shall be submitted for any future grading that may occur onsite. Grading that is proposed at this time shall be shown on the Site Development and Grading Plan. This mitigation is ongoing.
Impact/Mitigation 31 Condition #5C	Construction and continued use of the golf course degraded riparian habitat, and a lighting plan is required to prevent light and glare to the riparian corridor.	In Progress. The project proponent needs to indicate the intensities and locations of lights on the SDGP in compliance with the language within the mitigation, to ensure that it is designed, sited and shielded to minimize light and glare impacts to wildlife within the riparian corridor.
Impact/Mitigation 32.	Future construction on the project site could disturb nesting raptors, which could result in the loss of	The applicant has requested an amendment to the Mathematics Conference Center PUD which includes demolition of the

<u>Measure/ Condition</u>	<u>Description</u>	<u>Status</u>
	eggs, young or the reproductive effort, requiring avoidance of nesting season or preconstruction surveys.	existing restaurant building, construction of additional parking, installation of considerable landscaping, and associated grading activities. Supplemental environmental analysis will consider this impact.
Impact/Mitigation 33.	The renovation and/or use of the existing restaurant building or other buildings on the site could disturb nesting swallows, which could result in the loss of eggs, young or the reproductive effort, requiring avoidance of nesting season or preconstruction surveys.	The applicant has requested an amendment to the Mathematics Conference Center PUD which includes demolition of the existing restaurant building, construction of additional parking, installation of considerable landscaping, and associated grading activities. Supplemental environmental analysis will consider this impact.
Impact/Mitigation 34.	The renovation and/or use of the existing restaurant building or the removal of large trees on the site may disturb or destroy roosting Pallid and/or Townsend Big-Eared Bats, requiring predemolition/preconstruction surveys.	The applicant has requested an amendment to the Mathematics Conference Center PUD which includes demolition of the existing restaurant building, construction of additional parking, installation of considerable landscaping, and associated grading activities. Supplemental environmental analysis will consider this impact.
Impact/Mitigation 35 Conditions #11, 28	The water supply may not be sufficient for fire protection requirements to serve proposed headquarters of the American Institute of Mathematics (AIM), and may have impacts on the viewshed.	The applicant has requested an amendment to the Mathematics Conference Center PUD which includes demolition of the existing restaurant building, construction of additional parking, installation of considerable landscaping, and associated grading activities. Supplemental environmental analysis will consider this impact.
Impact/Mitigation 36 Condition #7A through F	Future grading and on-going operation of the golf course may increase soil erosion, requiring preparation of a SWPPP and a NPDES permit.	Complete. The RWQCB has accepted the Storm Water Pollution Prevention Plan (SWPPP) as adequate. The work plan described in the SWPPP is being implemented. The RWQCB staff will inspect the project site periodically and if there are any violations of the plan, the project proponent will be notified. This mitigation measure is satisfied assuming ongoing compliance with the SWPPP.
Impact/Mitigation 37 Conditions #13, 14	The proposed project may result in significant short-term noise impacts during any future construction.	The applicant has requested an amendment to the Mathematics Conference Center PUD which includes demolition of the existing restaurant building, construction of

<u>Measure/ Condition</u>	<u>Description</u>	<u>Status</u>
		additional parking, installation of considerable landscaping, and associated grading activities. Supplemental environmental analysis will consider this impact.
Impact/Mitigation 38.	The existing structures on the project site may contain ACMs or lead based paint. Demolition or remodeling may release air-borne asbestos and/or lead dust, causing a significant impact to workers or other persons in the area.	The applicant has requested an amendment to the Mathematics Conference Center PUD which includes demolition of the existing restaurant building, construction of additional parking, installation of considerable landscaping, and associated grading activities. Supplemental environmental analysis will consider this impact.
Impact/Mitigation 39 Conditions #15A - M	Construction of any remaining components of the proposed project could result in significant short term air quality impacts associated with dust generation.	The applicant has requested an amendment to the Mathematics Conference Center PUD which includes demolition of the existing restaurant building, construction of additional parking, installation of considerable landscaping, and associated grading activities. Supplemental environmental analysis will consider this impact.
Condition #22	Inconsistency with Land Use Regulations Operation of a golf course was determined by the City to be inconsistent with the Land Conservation Agreement List of Compatible Uses under the Williamson Act, requiring the City to file a Notice of Non-Renewal.	Complete. The City of Morgan Hill filed a Notice of Non-Renewal in August 2005.
Condition #23	Limitations on Time and Manner of Operation of Golf Course	The golf course may operate from April 16 <sup>th</sup> to September 30 <sup>th</sup> , from sunrise to sunset. The project proponent is in compliance with this condition of approval.
Condition #24	Review of Row of Trees Along Foothill Avenue	In progress. The project proponent must show the landscaping either on a detailed landscape plan or the SDGP. The City will determine whether the row of trees along Foothill Avenue shall be removed or diminished, or whether they are appropriate and can remain. This will occur at the time the City considers the final, single SDGP, which will occur when the SDGP has been deemed complete and ready for consideration and action.

Additional information on the status of the mitigations can be obtained from the August 18, 2005 letter to the City. If the City or the project proponent has any questions or clarifications regarding the status as shown above please feel free to contact me via telephone at 831-644-9174 ext. 210 or email at [mmccormick@pacificmunicipal.com](mailto:mmccormick@pacificmunicipal.com).

Respectfully,

PACIFIC MUNICIPAL CONSULTANTS

A large, stylized handwritten signature in black ink that reads "Michael McCormick".

Michael McCormick  
Associate Planner

Handwritten initials in black ink, appearing to be "MLM".



**CITY COUNCIL STAFF REPORT**  
**MEETING DATE: APRIL 5, 2006**

Agenda Item # 6

**TITLE: CAPSTONE COMMUNITY CONVERSATION**

**FROM: STEVE TATE, CHAIR, FINANCIAL POLICY COMMITTEE**

**RECOMMENDED ACTIONS:**

- 1) Authorize the City Manager to execute an agreement with ViewPoint Learning to provide public engagement services in connection with the April 29, 2006, Capstone Community Conversation, subject to City Attorney review.
- 2) Increase appropriations in the Communications and Marketing Budget within the General Fund by \$10,000.

**EXECUTIVE SUMMARY:**

The City is facing a difficult set of choices that includes raising new revenue and/or reducing existing service levels to the community. The Committee wants to make sure that the Capstone approach is consistent with the wishes of the City Council.

The Financial Policy Committee believes it is important that the City hold a Capstone Community Conversation so that all of the feedback that has been generated from previous Community Conversations may be presented at this event and so that the Capstone may serve as one more source of information for the City Council to consider at its May 19 workshop. Approximately thirty Community Conversations have taken place to date and more than 300 persons have attended these meetings. Staff has been gathering information compiled by facilitators from these meetings and will be presenting this information at the Capstone Community Conversation if the City council endorses this approach.

Attached is a proposal from ViewPoint Learning, the City's consultant that set up the existing Community Conversations product and plan. The Committee recommends that an agreement with ViewPoint Learning for the described scope of services be executed by the City Manager.

**FISCAL IMPACT:** The \$10,000 cost of hiring the consultant to facilitate the Capstone Community Conversation is available within the fund balance for the General Fund.



## The Future of Morgan Hill Community Conversation: A Capstone Event

### Expanding the conversation

In Morgan Hill's "community conversations", citizens are engaged in dialogue with other community residents about the choices and tradeoffs that the city faces over the next few years, and are working to craft a vision of the future they want for Morgan Hill. This dialogue will provide important insight for city council members as they make decisions about what course to follow to rectify Morgan Hill's structural deficit.

But before the time comes to make official decisions, it is important that city leaders have an opportunity to build on the work done by citizens and engage directly with community residents in a two-way learning process, in which they further develop the vision for the future of the city and work through the best ways forward together. We envision a "capstone event" that involves up to 40 participants, 2/3 civic and elected leaders and 1/3 citizens that have participated in the community conversations. We expect that most or all council members will want to participate fully in this session, which of course means it will be open to the public and the press.

### Goals and Key Outcomes

The goal of the session is to continue and expand the dialogue to include leaders as well. Council members will engage directly with citizens and community leaders in an open dialogue, allowing them to learn from the other participants, experiment with new ideas and ways of communicating about the challenges Morgan Hill faces and possible solutions. It will be important to be clear from the outset that participants at this session will not make any formal decisions about what steps the city will take, but they will work together, building on the results of the community conversations to move closer to identifying technically feasible possibilities the public is likely to support and a set of clear conditions for that support. In other words, they will help to build a better foundation for the subsequent decisions the Council will need to make.

Key outcomes of this "**Strategic Dialogue**" will be

- A common understanding of the problem and the potential consequences of doing nothing,
- Insight into the most promising ways forward (on both cuts and enhancement)
- A better understanding of the choices and the associated tradeoffs and how they are understood by the public and leaders

- Insight into key public concerns and possible roadblocks
- A stronger basis for making the decisions in the appropriate forum at a later date

Having the freedom to engage in dialogue (rather than debate) before a proposal is put forward or any decisions are made will allow council members and others to consider new possibilities, learn without having to persuade and to test ideas without making a public statement or commitment. It is the missing step in many decision-making processes.

### **Morgan Hill Strategic Dialogue Outline**

1. Initial briefing (overview of project, process to date, purpose of meeting, ground rules of dialogue)
2. Introductory Comments
3. Trends and changes that have shaped the current situation
4. Presentation of Results of Community Conversations with public
5. Working dinner: What are the best choices for the future of Morgan Hill that will:
  - a. Be technically feasible
  - b. Be able to gain the support of the public
  - c. Make sense for the future of the city as you see it?
6. Reports of dinner groups and finding common ground
7. Next steps and concluding comments

The event will take four hours either on a weeknight or a Saturday afternoon. In either case, a meal would be provided by the city.

### **Budget**

Viewpoint Learning's fee for this event is \$10,000. As discussed, this represents a significant reduction in our customary fee for a Strategic Dialogue session, however we are committed to the Morgan Hill community conversation and believe this event is an important part of the process. This fee includes design of the process and any accompanying materials as well as facilitation of the session, along with a brief written summary of the results.

This fee does not include any direct costs for room rental or catering. It also does not include video-taping or editing. If the latter is something the city would like to add, we would be happy to provide a budget for this service.



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: April 5, 2006***

### **CONTRACT WITH DAVID J. POWERS & ASSOCIATES FOR ENVIRONMENTAL CONSULTING SERVICES**

#### **RECOMMENDED ACTION(S):**

Authorize the City Manager to execute the attached Agreement.

#### **EXECUTIVE SUMMARY:**

To streamline the City's environmental review (CEQA) process, the 2003 MAXIMUS Report on the City's Development Processing Services recommended the City contract with an established environmental consulting firm. The consultant would prepare Initial Studies, Environmental Impact Reports and other CEQA related documents for proposed developments. In February 2005, the City entered into a contract with David J. Powers & Associates to provide the City's CEQA services. The attached master contract extends the contract with Powers & Associates and covers the period from February 11, 2006 to February 11, 2007. In addition to the environmental reports, Powers also prepares the Notice of Preparation, Notice of Determination, Notice of Completion documents and the Mitigation Monitoring and Reporting Plan for most of the development projects. The exact number of CEQA documents to be provided and the cost of the services are estimated to be as high as \$1 million. The actual costs will be determined on a project by project basis. All costs associated with a CEQA review are paid for directly by the applicant. This contract will not utilize any City funds.

Planning Division staff will prepare the environmental documents for smaller projects including most single residential building site approval in hillside areas, and smaller project developments on infill sites in the urban areas. It is estimated that up to 15 percent of all environmental assessments will be prepared in house by planning staff.

#### **FISCAL IMPACT:**

No budget adjustment required.

**Agenda Item # 7**

**Prepared By:**

**Planning Manager**

**Approved By:**

**Community  
Development Director**

**Submitted By:**

**City Manager**

## **Consultant Agreement David J. Powers and Associates**

THIS AGREEMENT is made this \_\_\_\_\_ day of February, 2006, by the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and David J. Powers & Assoc., a California corporation ("CONSULTANT").

### **RECITALS**

The following recitals are a substantive part of this Agreement:

1. CONSULTANT is qualified by virtue of experience, training, education, and expertise to accomplish these services.

### **AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall cover services rendered from February 11, 2006, until February 11, 2007.
2. **Services to be Provided.** The services to be performed by CONSULTANT shall consist of preparation of CEQA documentation and related environmental studies as described in the **proposal from the CONSULTANT dated \_\_\_\_\_, and attached as Exhibit A.**
3. **Compensation.** CONSULTANT shall be compensated as follows:
  - 3.1. **Amount.** Compensation under this Agreement shall not exceed one million (\$1,000,000.00.)
  - 3.2. **Payment.** For work under this Agreement, payment shall be made per monthly invoice. For extra work not a part of this Agreement, written authorization by CITY will be required, payment shall be based on **hourly rates in Exhibit "B"** attached and incorporated herein by this reference.
  - 3.3. **Records of Expenses.** CONSULTANT shall keep accurate records of payroll, travel, and expenses. These records will be made available to CITY.
  - 3.4. **Termination.** CITY and CONSULTANT shall have the right to terminate this Agreement, without cause, by giving fifteen (15) days' written notice.

4. **Insurance Requirements.**

4.1. **Commencement of Work.** CONSULTANT shall not commence work under this Agreement until it has obtained CITY approved insurance. For general liability and automobile insurance policies, CONSULTANT shall provide CITY, prior to commencement of work, with a separate endorsement which states that the policy contains the following language:

- The CITY, its elected officials, officers, employees, agents and representatives are named as additional insureds; and,
- The insurer waives the right of subrogation against CITY and CITY'S elected officials, officers, employees, agents, and representatives; and,
- Insurance shall be primary non-contributing.

CONSULTANT shall furnish CITY with copies of all policies or certificates subject to this Agreement, whether new or modified, promptly upon receipt. No policy subject to this Agreement shall be cancelled or materially changed except after thirty (30) days' notice by the insurer to CITY by certified mail.

4.2. **Workers Compensation Insurance.** CONSULTANT and all subcontractors shall maintain Worker's Compensation Insurance, if applicable.

4.3. **Insurance Types and Amounts.** CONSULTANT shall maintain general commercial liability and automobile insurance against claims and liabilities for personal injury, death, or property damage, providing protection of at least \$1,000,000 for bodily injury or death to any one person for any one accident or occurrence and at least \$1,000,000 for property damage. CONSULTANT shall also maintain professional liability insurance in an amount of \$1,000,000 per claim.

4.4. **Acceptability of Insurers.** All insurance required by this Agreement shall be carried only by responsible insurance companies licensed to do business in California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

4.5. **Provision of Agreement to Insurers.** CONSULTANT represents and warrants that they have provided a copy of this Agreement to their respective insurers, and the insurers are aware of all obligations pertaining to CONSULTANT as stated in this Agreement.

5. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

6. **Non-Discrimination.** CONSULTANT covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry, in any activity pursuant to this Agreement.

7. **Independent Contractor.** It is agreed to that CONSULTANT shall act and be an independent contractor and not an agent or employee of CITY.

8. **Compliance with Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

9. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT for work performed under this agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

10. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

11. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of CONSULTANT is as follows:

David J. Powers & Associates  
1885 The Alameda, Suite 204  
San Jose, CA 95126

Address of CITY is as follows:

Community Development Director	with a copy to:
Kathy Molloy Previsich	Irma Torrez
City of Morgan Hill	City Clerk
17555 Peak Avenue	17555 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

12. **CONSULTANT'S Proposal.** This Agreement shall include CONSULTANT'S proposal or bid, which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

13. **Licenses, Permits, and Fees.** CONSULTANT shall obtain a City of Morgan Hill Business License, all permits, and licenses as may be required by this Agreement.

14. **Familiarity with Work.** By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

15. **Time of Essence**. Time is of the essence in the performance of this Agreement.
16. **Limitations Upon Subcontracting and Assignment**. Neither this Agreement or any portion shall be assigned by CONSULTANT, without prior written consent of CITY.
17. **Authority to Execute**. The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.
18. **Indemnification**.
- 18.1. For claims arising from CONSULTANT'S professional acts or omissions, CONSULTANT agrees to protect, defend and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including reasonable attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, to the extent arising out of the negligence performance and/or errors or omission of CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT.
- 18.2. For any other claim arising from any other act or omission, performance or non-performance by CONSULTANT under this Agreement, CONSULTANT agrees to protect, defend and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including reasonable attorneys' fees, for injury or death of any person, or damage to property, to the extent arising out of this Agreement by CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT.
- 18.3. The only exception to CONSULTANT'S above-named responsibilities to protect, defend, and hold harmless CITY is due to the sole negligence of CITY as adjudged by a court of competent jurisdiction. CONSULTANT shall bear any initial burden of protection, defense, and hold harmless until such court judgment is rendered.
- 18.4. This agreement shall apply to all liability, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.
19. **Modification**. This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by subsequent mutual written agreement executed by CITY and CONSULTANT.
20. **California Law**. This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the Santa Clara County Superior Court.
21. **Interpretation**. This Agreement shall be interpreted as though prepared by both parties.

22. **Preservation of Agreement**. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

**IN WITNESS THEREOF**, these parties have executed this Agreement on the day and year shown below.

ATTEST:

THE CITY OF MORGAN HILL

\_\_\_\_\_  
Irma Torrez, City Clerk

Date: \_\_\_\_\_

\_\_\_\_\_  
J. Edward Tewes, City Manager

Date: \_\_\_\_\_

APPROVED:

“CONSULTANT”

\_\_\_\_\_  
Jack Diles, Risk Manager

Date: \_\_\_\_\_

\_\_\_\_\_  
By:

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Janet Kern, City Attorney

Date: \_\_\_\_\_



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: April 5, 2006***

**Agenda Item #8**

**Prepared By:**

**Cmdr. Terrie Booten**

**Approved By:**

**Chief of Police**

**Submitted By:**

**City Manager**

### **APPROVE PURCHASE ORDER FOR Data911 MOBILE COMPUTER SYSTEMS**

#### **RECOMMENDED ACTION(S):**

- 1) Authorize the City Manager to approve a Purchase Order totaling in the amount of \$45,530.55 with Data911 for new mobile computers systems.
- 2) Award the total project cost of \$104,069.82 and authorize the City Manager to execute a three year agreement with Data911 for the purchase of these Computer systems, subject to the review by the City Attorney.
- 3) Approve a budgetary increase of \$13,008.73 in the Police Donation Fund.

**EXECUTIVE SUMMARY:** Since June 2005 the Police Department has been without vendor computer support for the connectivity software which operates the mobile computer terminals used in the field. The Department has been investigating various replacement mobile computer solutions for the patrol vehicles since the vendor (AT&T) advised the Department approximately three years ago that the computer support would be terminated. Specifications were developed and a competitive bid process as set forth in the Morgan Hill Municipal Code (Chapter 3.04) was followed. To accommodate the cost of purchase and installation in the Department's budget, it was determined that the mobile computers will be considered as part of the build up of the new patrol vehicles at the time of purchase and they will be funded through the Equipment Replacement Fund.

Four sealed bids were received in March. After careful review of the submitted bids, staff determined that three proposals did not meet the Department's bid specifications. The remaining proposer, Data911 Systems, satisfied the Department's bid specifications and will provide a total purchase package of \$104,069.82 over the next three years for a total of sixteen computer systems. Our plan is to purchase five computer systems at a total of \$32,521.82 now with our newly purchased patrol vehicles as part of their build out and purchase two additional computer systems for a total of \$13,008.73 this fiscal year using donation funds to retrofit the supervisor SUV's bought last year. For budget year 06/07 the cost for seven computer systems will be \$45,530.54 and for the 07/08 budget year we will make a final purchase for two units at a cost of \$13,008.73.

The Data 911 Systems package is compatible with the Department's current Cingular Wireless communication system and will enable increased speed, improved connectivity, and increased efficiency as officers will be able to view pictures of suspects from their vehicles and write reports in the field. The reliability of the new system will afford officers the opportunity to remain in the field and therefore, increase officer productivity, visibility and decrease response time to calls.

The Department is currently equipping four newly purchased patrol vehicles and one prisoner transport van. The timing of this purchase order will be crucial in completing the build out and operation of the vehicles. The connectivity is in place and awaiting the installation of these computers to complete this project.

**FISCAL IMPACT:** The funds are included in the Equipment Replacement Fund (790-43830-8500) for Fiscal Year 05/06 as part of the build up of the new fleet.



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: April 5, 2006***

### **PURCHASE OF POLICE DEPARTMENT MSO/PRISONER TRANSPORT VEHICLE**

#### **RECOMMENDED ACTION(S):**

1. Authorize the City Manager to approve the purchase order for a police transport van through Downtown Ford totaling in the amount of \$22,560.00.

**EXECUTIVE SUMMARY:** On January 18, 2006, the City Council approved the 2005/2006 Spending Plan for S.L.E.S.F. The MSO/Prisoner Transport Vehicle and build out for \$50,000 is a part of the S.L.E.S.F. Plan.

With the development of Multi-Service Officers whose duties include booking and transport of prisoners and jail management, the need for a vehicle with the capability to transport multiple prisoners was identified. Specifications were developed and a competitive bid process as set forth in the Morgan Hill Municipal Code (Chapter 3.04) was followed.

Three sealed bids were received in March from Downtown Ford, The Ford Store and Bob Lynch Ford. The Downtown Ford submitted the lowest bid based on our specifications.

The Department is aware of budget constraints and has evaluated the needs in regard to adding to the vehicle fleet. Staff recommends authorization based upon the need to provide a safe and efficient level of service required in the community.

#### **FISCAL IMPACT:**

The cost of this vehicle is offset through S.L.E.S.F. (COPS) fund transfer to the General Fund.

#### **Agenda Item # 9**

##### **Prepared By:**

Jerry Neumayer  
**Police Sergeant**

##### **Approved By:**

\_\_\_\_\_  
**Department Director**

##### **Submitted By:**

\_\_\_\_\_  
**City Manager**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: April 5, 2006***

### **ACCEPTANCE OF DONATION FROM W. ROBERT RUGE FOR THE LIBRARY BUILDING PROJECT**

#### **RECOMMENDED ACTION(S):**

Accept monetary donation of \$5,000 by W. Robert Ruge for the Library Building Project.

#### **EXECUTIVE SUMMARY:**

The Morgan Hill Library building project is completing the construction bid phase. While the construction documents were being finalized, Mr. W. Robert Ruge approached the Morgan Hill Library staff with a donation request. He desired to provide an upgrade to the library entrance, and the front lobby space became a perfect opportunity for this donation. A check in the amount of \$5,000 has been made to the Friends of the Morgan Hill Library in January 2006 and the floor specifications have been changed to note the upgrade in the bid packages. The Friends will write a check to the city when we request it. The check is being incorporated with the Friends Fund-raising campaign for the Library Project upgrades.

The Friends of the Morgan Hill Library will be fund-raising to upgrade specific furniture items, upgrade specific equipment and provide for art in the new library building.

Pursuant to the City's Administrative Policy V009 "Donation Policy", donations with estimated values of \$5,000 or more must be formally accepted by the City Council. Staff requests that Council recognize and acknowledge the monetary donation from Mr. Ruge.

#### **FISCAL IMPACT:**

\$5,000 donation will be used to upgrade the entry lobby flooring to a stone surface.

**Agenda Item # 10**

**Prepared By:**

\_\_\_\_\_  
**Special Assistant to the  
City Manager**

**Submitted By:**

\_\_\_\_\_  
**City Manager**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** April 5, 2006

### **SOUTH VALLEY CIVIC THEATRE LEASE RENEWAL OF THE MORGAN HILL COMMUNITY PLAYHOUSE**

#### **RECOMMENDED ACTION(S):**

- 1) Approve the lease agreement renewal with South Valley Civic Theatre ("SVCT") for use of the Morgan Hill Community Playhouse ("Playhouse").
- 2) Authorize the City Manager to execute the lease agreement renewal and do whatever is necessary to effectuate the agreement.

#### **EXECUTIVE SUMMARY:**

SVCT is the designated "Home Company" for the Morgan Hill Community Playhouse. SVCT had a prior lease agreement with the City for rental of the Playhouse from December 2002 to December 2005. The lease payments for that period were \$42,000 (\$12,000 in Year One, \$14,000 in Year Two, and \$16,000 in Year Three) with supplemental payments of approximately \$3,787 for ticket sales overages and a percentage of concessions for a total of approximately \$45,787 in revenue.

During the term of the prior agreement, SVCT was an excellent tenant that adhered to Playhouse Policies & Procedures as well as the terms of the lease agreement. SVCT provided a steady source of revenue for the Playhouse while providing the community with live theatre. They produced fifteen (15) plays during this period and were in residence approximately six (6) weeks for each production; fourteen (14) rehearsal days and ten (10) performance days. Per the terms of the agreement, SVCT leased the Playhouse on a non-exclusive basis in order to accommodate other use when not in residence and multi-use whenever possible during residency. SVCT has consistently been agreeable to accommodating multi-use of the facility whenever possible in an effort to promote the arts and increase Playhouse revenue.

SVCT has requested another three year lease for the Playhouse from January 2006 to December 2008. After negotiations with City staff and representatives from SVCT, it was determined that the general terms of the lease agreement remain the same with the exception of the lease amount and the exclusion of the supplemental payments for ticket and concession sales. An increase in the lease amount was based on a review of the number of rentable days SVCT is estimated to be in residence as it relates to the estimated revenue goals for the Playhouse for the same period. The exclusion of supplemental payments was based on a review of past payments and the payment process. It was determined that increasing the actual lease amount to include estimated percentages of ticket sales overages and concession sales, rather than to continue with the cumbersome process of these payments, would benefit both the City and SVCT.

#### **FISCAL IMPACT:**

The new terms of the agreement call for lease payments totaling \$66,000 over three years (\$20,000 in Year One, \$22,000 in Year Two, and \$24,000 in Year Three). These new terms generate an additional \$20,213 over the previous lease agreement without any increase in usage.

Attachment: Lease Agreement

**Agenda Item #11**

**Prepared By:**

\_\_\_\_\_  
(Staff Person))

**Approved By:**

\_\_\_\_\_  
(Department Head)

**Submitted By:**

\_\_\_\_\_  
**City Manager**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE: April 5, 2006**

**Agenda Item # 12**

**Prepared By:**

**Deputy City Clerk**

**Approved By:**

**City Clerk**

**Submitted By:**

**City Manager**

### **ADOPT ORDINANCE NO. 1763, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO SECTION 18.56.150 OF THE MINOR EXCEPTIONS TO ALLOW MINOR ADDITIONS WHILE MAINTAINING EXISTING NON-CONFORMING HEIGHTS. (ZA-05-28: OAKHILL-SPERA)**

### **RECOMMENDED ACTION(S):**

**Waive** the Reading, and **Adopt** Ordinance No. 1763, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

### **EXECUTIVE SUMMARY:**

On March 1, 2006, the City Council Introduced Ordinance No. 1763, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

### **FISCAL IMPACT:**

None. Filing fees were paid to the City to cover the cost of processing this application.

**ORDINANCE NO. 1763, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE MORGAN HILL MUNICIPAL CODE, SECTION 18.56.150 MINOR EXCEPTIONS TO ALLOW MINOR ADDITIONS WHILE MAINTAINING EXISTING NON-CONFORMING HEIGHTS. (ZA-05-28: OAKHILL-SPERA)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:**

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** Section 18.56.150 B.7. of the Morgan Hill Municipal Code is amended to read as follows:

**18.56.150 Minor Exception**

*B 7. Height for Residential Planned Developments (RPD). In any RPD district where the existing height of a residential dwelling was not constructed according to the RPD building height standard, the community development director may authorize building additions maintaining the existing nonconforming building height. Such additions may be approved where necessary to significantly improve the site plans or architectural design, and where scenic views or solar access for surrounding properties are not significantly affected.*

- SECTION 4.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.
- SECTION 5.** Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 1<sup>st</sup> Day of March 2006, and was finally adopted at a regular meeting of said Council on the -- Day of April 2006, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1763, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the -- Day of April 2006.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: April 5, 2006***

**Agenda Item # 13**

**Prepared By:**

**Deputy City Clerk**

**Approved By:**

**City Clerk**

**Submitted By:**

**City Manager**

### **ADOPT ORDINANCE NO. 1764, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A PRECISE DEVELOPMENT PLAN AND PUD GUIDELINES FOR A PLANNED UNIT DEVELOPMENT LOCATED AT THE NORTHWEST CORNER OF COCHRANE ROAD AND MADRONE PARKWAY (APN 726-33-028) (ZAA-04-11: COCHRANE-TBI)**

### **RECOMMENDED ACTION(S):**

**Waive** the Reading, and **Adopt** Ordinance No. 1764, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

### **EXECUTIVE SUMMARY:**

At a Special Meeting on March 22, 2006, the City Council Introduced Ordinance No. 1764, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Sellers; NOES: None; ABSTAIN: None; ABSENT: Kennedy, Tate.

### **FISCAL IMPACT:**

No budget adjustment required.

## **ORDINANCE NO. 1764, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A PRECISE DEVELOPMENT PLAN AND PUD GUIDELINES FOR A PLANNED UNIT DEVELOPMENT LOCATED AT THE NORTHWEST CORNER OF COCHRANE ROAD AND MADRONE PARKWAY (APN 726-33-028) (ZAA-04-11: COCHRANE-TBI)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:**

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration was filed with the associated General Plan Amendment and Zoning Amendment Applications, and an Addendum to the Mitigated Negative Declaration was approved with the proposed project.
- SECTION 4.** Section 18.30.090 of the Morgan Hill Municipal Code establishes minimum development standards for commercial PUDs.
- SECTION 5.** In accordance with Section 18.30.110 of the Morgan Hill Municipal Code, the City Council may grant exceptions to the minimum PUD development standards upon recommendation of the Planning Commission with the following affirmative findings:
- a. Approval of the exception is necessary for the preservation and enjoyment of substantial property rights of the applicant; and
  - b. The exception will only be approved to the extent necessary for the preservation and enjoyment of the substantial property rights of the applicant; and
  - c. The effect of the reduction or elimination of the development standard will be substantially mitigated by the provision of other design features or enhancements to the project; and
  - d. Approval of the exception will not be outweighed by the adverse effects to the public health, safety and welfare of persons working or residing in the area.
- SECTION 6.** Strict adherence to the city-wide PUD standards would hinder the establishment of an economically and functionally successful commercial shopping center at the proposed site.

- SECTION 7.**
- (a) Section 18.30.090.A.3 of the MHMC restricts building heights to 30 feet except as otherwise authorized by the City Council through the PUD process.
  - (b) Four of the five buildings proposed would meet the 30-ft standard with the exception of architectural elements which are proposed at heights of up to 34 feet. Section 18.56.040 of the Morgan Hill Municipal Code allows architectural elements of up to 50 ft in height as an exception to the code.
  - (c) One building is proposed to be 40 ft in height with architectural elements up to 50 feet in height. Precedent has been established for the approval of buildings that exceed 30 feet in height in other PUDs in the City, specifically the Tharaldson PUD and Cochrane Road PUD. Therefore, approval of an exception to Section 18.30.090.A.3 would not be a grant of special privilege, but would preserve the property rights of the applicant. Modification of this development standard for the shopping center will be mitigated through the exceptional design of the buildings with architectural elements that vary in height, as shown on the project plans.
  - (d) Therefore, the Council approves, on a separate and distinct basis, buildings that exceed 30 feet in height within the PUD.

- SECTION 8.**
- (a) Section 18.30.090.A.4 of the MHMC prohibits visual flat rooflines in a PUD.
  - (b) Precedent has been established for the approval of buildings designed with parapet walls in other PUDs in the City, specifically the Tharaldson PUD, Gateway PUD, Tennant Station (Safeway) PUD and the Cochrane Road PUD. Therefore, approval of an exception to Section 18.30.090.A.4 would not be a grant of special privilege, but would preserve the property rights of the applicant. Elimination of this development standard for the shopping center will be mitigated through the provision of site perimeter landscaping, building perimeter landscaping, and exceptional design of the buildings, as shown on the project plans.
  - (c) Therefore, the Council approves, on a separate and distinct basis, the use of parapet walls in the building designs.

- SECTION 9.**
- (a) Section 18.30.090.B.4 of the MHMC requires minimum 30-ft wide landscape areas adjacent to public streets within a PUD.
  - (b) Encroachment into the landscape area is permitted where it can be substantiated that provision of the 30-ft area is impracticable or would result in an undue hardship to the development. Per Section 18.30.090.B.4, encroachment shall not exceed 50 percent of the required landscape width and the reduced width shall be mitigated through additional landscape planting or a combination of an earthen berm and screen wall or both.

- (c) An encroachment into the Cochrane Road landscape buffer is needed to redirect a drive-thru exit lane for a proposed bank toward an interior drive aisle and to eliminate an exit only driveway on Cochrane Road. Elimination of the driveway will prevent conflicting traffic movements between vehicles traveling westbound on Cochrane with vehicles exiting the site and traversing two lanes of traffic to access the nearby Sutter Boulevard intersection. Strict adherence to Section 18.30.090.B.4 is impracticable as there is insufficient room for a drive-thru lane without the proposed encroachment. The encroachment will occur only to the extent necessary to provide the drive-thru exit lane, and will be mitigated through the existing berm and proposed landscaping.
- (d) The Council therefore approves, on a separate and distinct basis, an encroachment into the 30-ft wide Cochrane Road landscape area only to the extent necessary to provide a bank drive-thru exit lane.

- SECTION 10.**
- (a) Section 18.30.090.C.12 of the MHMC requires all landscaped areas provided in PUDs (with the exception of areas adjacent to public streets) to have a minimum width of 10 feet.
  - (b) Section 18.74.550 of the MHMC requires minimum five feet of landscaping within landscape planters citywide. An exception to Section 18.30.090.C.12 of the MHMC to allow five foot landscape areas would not be a grant of special privilege, but would preserve the property rights of the applicant. Furthermore, precedent has been established for the approval of reduced landscape areas in other PUDs in the City, specifically the Tharaldson PUD and the Cochrane Road PUD. An exception to Section 18.30.090.C.12 of the MHMC will be mitigated through 30-ft wide site perimeter landscaping along all street frontages and building perimeter landscaping as shown on the project plans.
  - (c) The City Council requires that the applicant provide minimum 10-ft wide landscaped areas where possible within all City required parking areas, but hereby approves, on a separate and distinct basis, landscaped areas no less than five feet in width.

- SECTION 11.**
- (a) Section 18.30.090.E.2 of the MHMC prohibits parking stalls to be located directly adjacent to the front of a major use occupying 10,000 sf or more floor area.
  - (b) Precedent has been established for the approval of parking in front of uses occupying 10,000 sf or more floor area in other PUDs in the City, specifically the Condit Road (Harley Davidson) PUD and the Cochrane Road PUD. Therefore, approval of an exception to Section 18.30.090.E.2 would not be a grant of special privilege, but would preserve the property rights of the applicant.
  - (c) The Council therefore approves, on a separate and distinct basis, parking directly adjacent to the front of buildings occupying 10,000 sf or more floor area.

- SECTION 12.** (a) Section 18.30.090.E.7 of the MHMC limits truck deliveries from 7 am to 7 pm Monday through Saturday.
- (b) The intent of Section 18.30.090.E.7 is to minimize noise impacts to surrounding residential uses. The proposed shopping center will be located along an arterial roadway adjacent to business park and commercial uses, which also have truck deliveries. Strict adherence to this standard would limit the type of tenants that could locate in the proposed shopping center, and deny the property owner the preservation and enjoyment of his substantial property rights.
- (c) The Council therefore approves, on a separate and distinct basis, truck deliveries between the hours of 6 a.m. to 9 p.m., Sunday through Saturday.

- SECTION 13.** (a) Section 18.30.090.G.3 of the MHMC prohibits utility equipment within the front setbacks in a PUD.
- (b) The intent of Section 18.30.090.G.3 is to minimize views of unsightly utilities and equipment along street frontages. An exception to Section 18.30.090.G.3 of the MHMC is needed only in the event that PG&E requires more than one transformer for Buildings B, C & D, and will be mitigated through extensive landscape screening. Precedent has been established for the approval of utilities in front setback areas in other PUDs in the City, specifically the Cochrane Road PUD. Therefore, approval of an exception to Section 18.30.090.G.3 would not be a grant of special privilege, but would preserve the property rights of the applicant.
- (c) The Council therefore approves, on a separate and distinct basis, one transformer within the front setback only in the event that PG&E requires more than one transformer for Buildings B, C & D.

**SECTION 14.** Therefore, based upon the above reasons, and the record in this matter, the City Council hereby approves exceptions to the city-wide PUD development standards for the proposed retail shopping center. The Council hereby finds that:

- a. Approval of the exceptions is necessary for the preservation and enjoyment of substantial property rights of the applicant; and
- b. The exceptions will only be approved to the extent necessary for the preservation and enjoyment of the substantial property rights of the applicant; and
- c. The effect of the reduction or elimination of the development standards will be substantially mitigated by the provision of other design features or enhancements to the project; and
- d. Approval of the exceptions will not be outweighed by the adverse effects to the public health, safety and welfare of persons working or residing in the area.

**SECTION 15.** Based on the foregoing, the City Council hereby approves a precise development plan as contained in that certain series of documents date stamped February 21, 2006, on file in the Community Development Department, entitled

"A Retail Shopping Center For Madrone Village" prepared by ARCTEC. These documents, as amended by site and architectural review, show the location and sizes of all lots in this development and the location and dimensions of all proposed buildings, basic design, uses, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.

**SECTION 16.** The approved project shall be subject to the following conditions:

- a. The applicant shall comply with the mitigation measures of the approved mitigated Negative Declaration.
- b. The project shall be subject to compliance with the Madrone Village Shopping Center PUD Guidelines as attached in Exhibit A of this Resolution.
- c. Defense and indemnity. Applicant agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, injuries, costs and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed against City by reason of its approval of applicant's project. In addition, developer shall pay all pre-tender litigation costs incurred on behalf of the City including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals, but shall not be required to pay any litigation from the City. However, developer shall continue to pay reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted.

**SECTION 6.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 7.** Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the special meeting of the City Council of the City of Morgan Hill held on the 22<sup>nd</sup> Day of March 2006, and was finally adopted at a regular meeting of said Council on the Day of April 2006, and said ordinance was duly passed and adopted in accordance with law by the following vote:

<b>AYES:</b>	<b>COUNCIL MEMBERS:</b>
<b>NOES:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSTAIN:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSENT:</b>	<b>COUNCIL MEMBERS:</b>

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1764, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of April 2006.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

## **PLANNED UNIT DEVELOPMENT GUIDELINES MADRONE VILLAGE SHOPPING CENTER MORGAN HILL, CA**

### **Description of Project:**

Madrone Village Shopping Center

### **Location of Project:**

North West Corner of Madrone Parkway and Cochrane Road, Morgan Hill, California

### **Introduction to Project:**

76,897 square feet retail shopping center consisting of five single-story buildings.

### **Allowed and Conditional Uses:**

#### Permitted Uses

- Retail Stores
- Restaurants
- Offices and Professional Offices (excluding medical, dental and/or health related offices)
- Financial Services
- Personal Services
- Business and Trade Schools
- Specialty Grocery Stores, not to exceed 15,000 sf
- Drug Stores

#### Conditional Uses

- Day Care Centers/Nursery Schools
- Commercial Recreation
- Gasoline Service Stations (including ancillary convenience stores)
- Drive-thru uses
- Grocery Stores exceeding 15,000 sf but less than 50,000 sf
- Any other use which the Planning Commission finds to be of similar nature to the permitted uses and conditional uses specified above

### **Original PUD – Allowed Uses:**

Same as Above

## **Commercial Development Standards**

The following standards shall apply to all commercial PUDs:

### **A. Architecture/Site Planning**

1. The general aesthetic character of all building exteriors shall be early Mission California theme for the PUD.
2. The location of all physical improvements shall be consistent with the Development Plan established for the PUD.
3. No building within this PUD Phase I shall exceed 30 feet in height with the exception of specific architectural features (34 feet maximum) except as otherwise authorized by the City Council through the PUD approval process. No building within this PUD Phase II shall exceed 40 feet in height with the exception of specific architectural features (50 feet maximum) except as otherwise authorized by the City Council through the PUD approval process.
4. Rooflines shall vary in height and shall incorporate a maximum of two varying roof types (e.g., hip, gable).
5. Structures shall incorporate breaks in horizontal planes by stepping or staggering setbacks and recessing windows and entrances, to provide substance and scale.
6. Doors and windows shall be enhanced by use of various sizes and shapes, and highlighted by the use of accent trim (e.g. molding, pop-out or wood trim). The design shall be complementary to the architectural style of the PUD.
7. All exterior wall elevations visible from and/or facing public roadways shall have architectural treatment.
8. Façade architectural treatment shall be applied to all building elevations with the same degree of detail as the building entrance.
9. No franchise architecture shall be permitted.
10. Buildings situated or near the front setback shall provide public access from the side(s) of the buildings at or near the front setbacks.
11. Building design shall be compatible with the immediate environment and provide harmonious transition between various uses.
12. No mechanical equipment shall be exposed on the wall surface of any building.
13. Mechanical and utility equipment shall be located below the roofline or parapet wall and out of public view. Location within the building or at ground level is preferred to roof-mounting. When such equipment cannot be so located, all roof-mounted mechanical equipment or ductwork which projects vertically above the roof or roof parapet shall be screened by an enclosure which is detailed consistently with the building design.
14. Gutters and downspouts shall be located interior to the wall when facing a roadway frontage. All other gutters and downspouts that cannot be located interior to the wall shall be treated to blend into the façade to which it is attached, unless used as a major design element, in which case the color shall be consistent with the color schemes of the building.
15. Any outdoor storage of goods, materials or equipment shall be limited to 8 feet in height and screened from view of any roadway or adjacent property. The screening shall be designed as an integral part of the building design and site layout. Chain link fencing with wood inserts is not an acceptable manner of screening.
16. Trash enclosures shall be constructed of solid masonry material, consistent with the building on-site, and shall be a minimum 6 ft. in height, with solid view obstructing gates. Trash enclosures shall be located in inconspicuous locations.

17. Fences and walls shall be designed to be compatible with the surrounding landscape and architectural style of the PUD.
18. Buildings shall be placed at the front setback line for at least 35 percent of the street frontage of the PUD, unless infeasible due to the size or configuration of the property.
19. Provisions for connecting driveways and walkways between adjacent properties within the PUD are to be provided.
20. Convenient pedestrian access shall be provided to commercial uses from residential areas within or adjacent to the PUD.

#### B. Easements

1. Easements for the installation and maintenance of utilities, walkways, roads, shared driveways, parking and drainage facilities shall be recorded as part of any subdivision map or lot line adjustment.

#### C. Landscaping

1. The design and location of all landscaping shall be consistent with the Development Plan established for the PUD.
2. The general characteristics of the plant palette for the PUD shall be a combination of year round color and textural interest. Plants shall be selected on the basis of color combinations, growth patterns, low maintenance and water conservation characteristics. At time of installation, all trees shall have a minimum height of eight feet and minimum crown diameter of three feet.
3. All street trees and trees planted within the front setback areas shall have a minimum height of ten feet and minimum crown diameter of four feet.
4. A minimum 30-foot wide landscape area (excluding any landscaping in the right of way) shall be provided adjacent to all public streets within the PUD. Encroachment into this area may be permitted where it can be substantiated that provision of the 30-foot area is impracticable or would result in an undue hardship to the development. Encroachment shall only be allowed to the extent necessary and shall not exceed 50 percent of the required landscape width. Where encroachment is allowed, the reduced width shall be mitigated through additional landscape planting or a combination of an earthen berm and screen wall or both. An encroachment into the 30-ft wide Cochrane Road landscape area shall be permitted only to the extent necessary to allow a drive-thru exit lane for the proposed bank. The encroachment shall be mitigated through the existing berm and additional landscaping.
5. Landscaping shall be placed adjacent to a minimum of 50% of the perimeter of all buildings.
6. Landscaping at the entrance of building shall include box size and/or accent trees with a minimum height of 10 feet and crown width of four feet to create a focal point to help direct people to the buildings=entrances.
7. Native oaks and field stones shall be incorporated into the landscape plan of the PUD.
8. A minimum of 15% of all parking areas shall be landscaped. Required setback and perimeter planting areas shall not be counted in this area, but may include the building perimeter landscaping.
9. Canopy-providing trees shall be planted in the parking lot planter islands to produce shade.
10. Entrances to the PUD shall be well landscaped and serve as a focal points.
11. Shrubs and vine planting shall be provided to screen utilities and trash enclosures.

12. All landscape areas provided (with the exception of areas adjacent to public streets) shall have a minimum width of 5 feet. This includes but is not limited to landscaping adjacent to buildings, along side and rear property lines, and finger planters within parking lots.
13. All parking areas shall be screened from view of public streets by use of the existing berming.
14. Landscaping shall be used to soften the appearance of fences and walls and building elevations which lack fenestration or other architectural detailing.

#### D. Lighting

1. The design of the exterior building lighting and parking lot lighting fixtures shall be compatible with the architectural style of the PUD.
2. Parking lot lighting shall be consistent throughout the PUD. The maximum height of the lighting shall be 20 ft. except that lighting standards within 100 ft. of residentially zoned properties shall be limited to a maximum height of 15 ft.
3. Lighting for pedestrian pathways shall be reduced in height and scale, to create a more human-scale feeling and atmosphere.
4. All lighting shall be shielded and directed in such a manner so as not to directly cast light on neighboring properties. Adjustments to the lighting intensity may be required after commencement of the use.

#### E. Parking and Loading/Circulation

1. Parking shall be screened from public view through the use of berming, hedgerow planting, shrubs, trees, fences or walls, or any combination thereof, provided that no more than 35% of the total screening shall consist of fences or walls. At time of installation, shrub plantings shall be minimum 5-gallon size, trees shall have a minimum height of eight feet and minimum crown diameter of four feet, and berming/fences/walls shall be a minimum 3 ft. in height, as measured from the nearest street curb.
2. No angled parking or one-way drive aisles shall be utilized in any parking lot.
3. Parking areas shall be designed to include provision for pedestrian walkways for access to building entrances. Walkways that cross traffic lanes shall have special design features such as raised and/or textured pavement, narrowed roadway, or combination thereof. Walkways shall be provided through landscaped areas to protect landscaping from foot traffic damage.
4. Reciprocal access and shared parking between properties shall be used, whenever possible.
5. Loading areas and docks shall be screened from view by a solid wall. The wall shall be architecturally treated and screened with landscaping. Loading areas shall not be located adjacent to or visible from public streets.
6. Truck deliveries shall be limited to 6 a.m. to 9 p.m., Sunday through Saturday.
7. Cross access easements and joint-use drive aisles shall be provided throughout the PUD.
8. Drive aisles shall allow for complete circulation within the PUD, with sufficient width for emergency vehicles. Dead end drive aisles shall not be allowed.
9. Shared access easements and driveways shall be used to minimize paved areas and curb cuts.
10. Pedestrian access shall be provided between the adjacent properties.

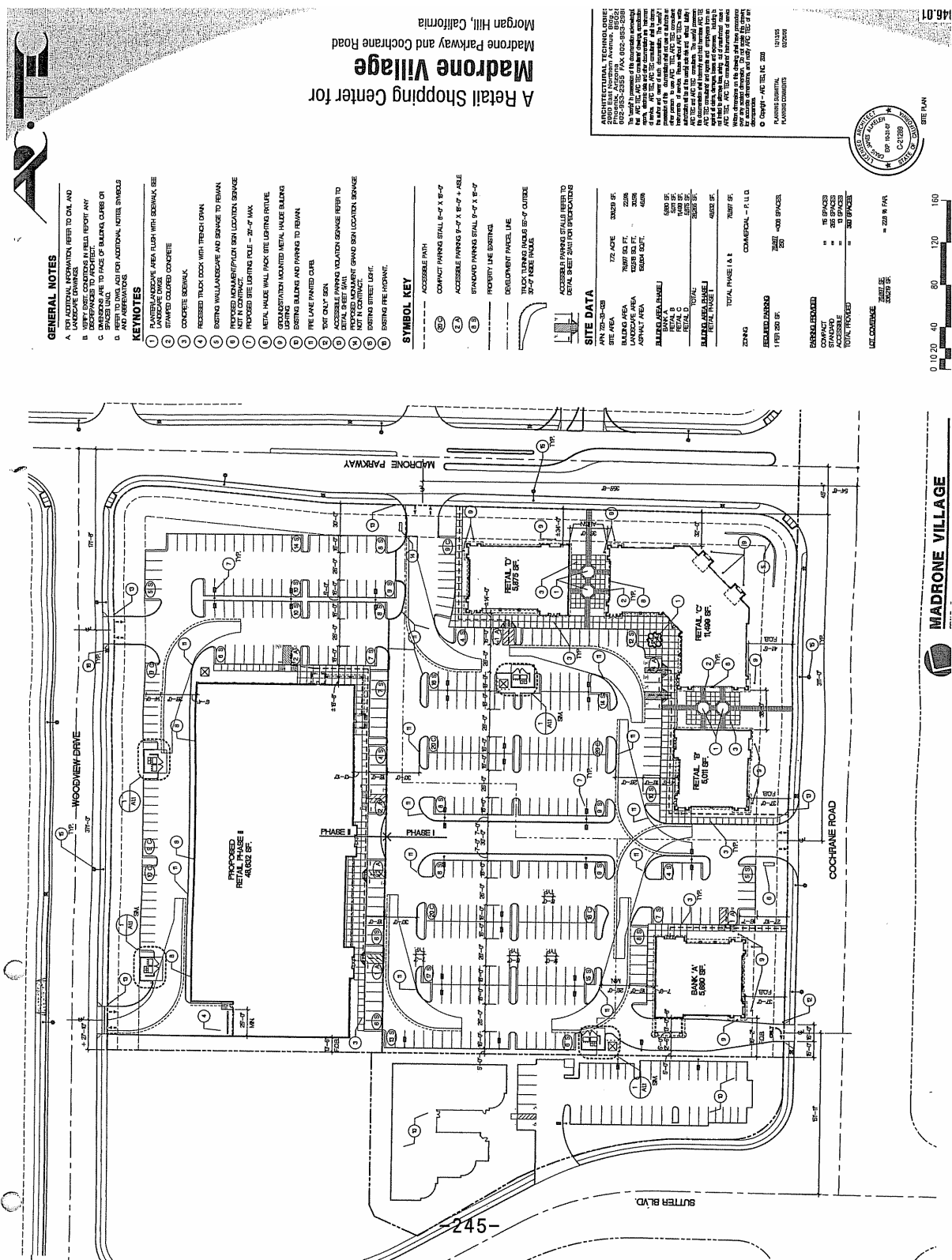
F. Signage/Displays

1. PUDs which are, due to their location, eligible for freeway signage shall utilize a single freeway sign consistent with the provisions of the City Sign Ordinance.
2. No exterior retail displays shall be allowed.
3. A uniform sign program shall be required for all properties and uses within the PUD.
4. Signage shall be prohibited on the raised architectural features, and shall not extend above the height of the main building elevation.

G. Utilities and Appurtenant Uses/Devises

1. The proposed project will discharge storm drainage to existing storm drain laterals that were stubbed to the site when the Business Park was constructed. The storm drain laterals are connected to the detention pond that provides detention for the entire Park.
2. All backflow devices, fire risers and check valves shall be screened with landscaping.
3. No utility equipment shall be located within the front setback area unless placed within an underground vault. All transformers shall be located interior to the site, outside of the front setback area, and shall be screened with landscape material. \* EXCEPTION: If it is determined by P.G. & E. that more than one (1) transformer is required for Buildings 'B, C & D', only one (1) transformer shall be within the parking lot (Building 'C' only).
4. Uses within the PUD that utilize shopping carts shall provide indoor storage of the carts and shall provide for collection areas throughout the parking lots.
5. Vending machines, rides, newspaper racks or any coin-operated devices shall not be placed on the exterior of any buildings.

(End)





## **REDEVELOPMENT AGENCY STAFF REPORT**

**MEETING DATE:** *April 5, 2006*

### **REVISION TO FAÇADE IMPROVEMENT PROGRAM**

#### **RECOMMENDED ACTION(S):**

Authorize the Executive Director to modify the Façade Improvement Program to include older commercial and industrial buildings.

#### **EXECUTIVE SUMMARY:**

Since its inception in 1991, the Façade Improvement Program has provided assistance to over 65 properties, primarily in the Downtown. The Program provides financial assistance in the form of 50% rebates to property owners for the improvement of the exterior appearance of their properties. The Program also offers reimbursement for limited architectural design costs, and full reimbursement of City Site and Architectural Review fees. For your reference, attached is a summary of the existing program criteria.

The program is limited to properties in the Downtown CC-R zone and along the Monterey, Dunne and Tennant Avenue corridors. There are, however, some older commercial and industrial areas that could use this program to help attract or maintain tenants, but do not currently qualify because of their locations. Staff is requesting that the Executive Director be given authority to use this program as one of the Agency's tools for encouraging private investment to rehabilitate these older buildings, thus, eliminating blight in the project area. The specific criteria for eligible buildings will be developed by staff.

The City Council's Community and Economic Development Committee (C&ED) has reviewed this program modification and recommends approval. However, C&ED was concerned about whether this expansion of the program would impact the Agency's ability to assist properties in the downtown and other existing eligible areas. Staff indicated the expansion of the program should not impact the Agency's ability to assist properties in the existing eligible areas, but we would monitor the number of older buildings participating in the program to ensure that was the case. In the event we receive applications adversely impacting our ability to assist properties in existing eligible areas, staff will set a annual limit to the amount of funds available for older, commercial buildings.

**FISCAL IMPACT:** The current \$150,000 budgeted for the Façade Program in FY2005-06 (317 - Economic Development Programs) should be sufficient to meet the estimated demand for the expanded Program without impacting the use by properties in the existing eligible areas.

**Agenda Item # 14**

**Prepared By:**

**BAHS Analyst**

**Approved By:**

**BAHS Director**

**Submitted By:**

**Executive Director**